Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

FLORENCE H. ALEXANDER, Ph.D., an Individual,

Petitioner,

v.

MICHAEL BOWERS, in his official capacity as Attorney General of the State of Georgia, LEWIS MASSEY, in his official capacity as Secretary of State of the State of Georgia, et al.

Respondents.

On Petition For Writ Of Certiorari
To The Georgia Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Whether the state court must provide notice and a hearing pursuant to due process before enjoining a property owner from selling her property?

2. Whether due process requires a meaningful hearing?

3. Whether posting security is the minimum required for due process?

4. Whether preventing a property owner to dispose of property is a taking under the Fifth Amendment?

5. Whether only allowing a property owner to sell his property to a particular organization, under an expired contract and with all proceeds being paid into the court's registry is a taking in violation of the just compensation clause of the Fifth and Fourteenth Amendments?

Parties to the Action

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: (a) Original Plaintiffs/Respondents: Tyre E. Chapman, Eunice D. Chapman, Jason T. Chapman, Ruby N. Nicely, Sierra N. Nicely, Fred Dooley, Lorraine C. Dooley, Jason L. Dooley, Freddie Mitchell, Sr., Peggy L. Smith, Gloria Bonner, Danyel M. Bonner, Dave Wolfork, Brenda Wolfork, Kenyon Worlfork, Dewain Carroll, Johnnie H. Carroll, Kristin L. Carroll, Cornelius Haston, Jr., Sandra A. Haston, Christen O. Haston, Clifton O. Haston, Sandra A. Haston, Emmanauel Kelley, Emmanuael, Kelley, II, Shirley Mann-Kelley, Ronald Rollins, Jr., Timothy T. Jenkins, Veneta M. Jenkins, Ketwanna L. Jenkins, Patricia T. Coran, D'Amica Coran, Daniel E. McClendon, and Daniel E. McClendon, Jr; (b) Original Defendants: Ebon Foundation, Inc., d/b/a Ebon International Preparatory Academy, a District of Columbia Non-profit Corporation, and Florence Hicks Alexander; and (c) Original Intervenors/Respondents: Joyce Oatman, as Director of Ebon Foundation, Inc., Michael Bowers, in his official capacity as Attorney General of the State of Georgia, and Lewis Massey, in his official capacity as Secretary of State of the State of Georgia.

Pursuant to Rule 29.1 of this Court, Petitioner is not a corporation, does not have a parent company, and does not have any non-wholly owned subsidiaries.

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Florence H. Alexander, Ph.D. hereby petitions this Court for a writ of certiorari to review the judgment in this case of the Georgia Supreme Court.

OPINIONS AND ORDERS BELOW

1. The opinion of the Georgia Supreme Court, dated February 23, 1998, is published at 269 Ga. 340 (1998) and will be published at 498 S.E.2d 728, and is reproduced in Appendix A.

2. The order of the Superior Court of Monroe County, State of Georgia dated June 2, 1997, nunc pro tunc to May 23, 1997, is reproduced in Appendix B.

3. The oral opinion of the Superior Court of Monroe County, State of Georgia dated May 23, 1997, is reproduced in Appendix C.

4. The oral opinion of the Superior Court of Monroe County, State of Georgia dated May 22, 1997, is reproduced in Appendix D.

5. The order of the Superior Court of Monroe County, State of Georgia dated May 23, 1997, nunc pro tunc to April 30, 1997, is reproduced in Appendix E.

6. The oral opinion of the Superior Court of Monroe County, State of Georgia dated April 30, 1997, is reproduced in Appendix F.

7. The Rule Nisi and Temporary Restraining Order of the Superior Court of Monroe County, State of Georgia dated April 24, 1997, is reproduced in Appendix G.

8. The order on motion for reconsideration issued by the Georgia Supreme Court dated April 2, 1998, is reproduced in Appendix H.

9. The order on second motion for reconsideration issued by the Georgia Supreme Court dated May 1, 1998, is reproduced in Appendix I.

JURISDICTION

The opinion of the Georgia Supreme Court was issued on February 23, 1998. The order on motion for reconsideration was issued by the Georgia Supreme Court on April 2, 1998. The order on second motion for reconsideration was issued by the Georgia Supreme Court on May 1, 1998. Petitioner filed a Notice of Appeal. This Court has jurisdiction pursuant to 28 U.S.C. § 1251(b)(3) and 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Fifth Amendment to the United States Constitution provides, in pertinent part: "[N]or be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The statutory provisions in this case are reproduced in Appendix J.

STATEMENT OF THE CASE

This case involves important federal issues that were previously decided by this Court, but the state court's decisions conflict with this Court's decisions. This Court has long held that notice and a meaningful hearing are required before depriving a property owner of his property. *See e.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). The result is devastating for Petitioner, a Florida resident, in that she has been deprived of her right to dispose of her real property without the due process requirement of notice and a hearing prior to the deprivation, and without a meaningful post-deprivation hearing. The result is also devastating to other real property owners because the state court's actions set a precedent to allow enjoining real property owners from selling their property without notice, without a hearing, without posting security, and without a meaningful post-deprivation hearing. This clearly is an abrogation of the Fourteenth Amendment's due process rights, which will have a long-term impact in the nation and on unsuspecting non-residents of any state.

This case also presents the issue as to what extent the state can limit a property owner's right to sell one's property under the Fifth Amendment's mandate that "private property [not] be taken for public use, without just compensation." *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). In *First English*, 482 U.S. at 322, this Court recognized that a temporary taking, as in this case, are not different in kind from permanent takings. Chief Justice Rehnquist stated that "the Los Angeles County ordinance has denied appellant all use of its property for a considerable period of years, and we hold that invalidation of the ordinance without payment of fair value for the use of the property during this period of time would be a constitutionally insufficient remedy." *Id.* At 322. Limiting a property owner's right to dispose of real property has been recognized to fall within the protections of

the Fifth Amendment. *See e.g., Hodel v. Irving*, 481 U.S. 704 (1987). Accordingly, the state court's initial temporary restraining order preventing Petitioner from selling her property to anyone was clearly a violation of the Fifth Amendment and the state court should have found it to be so.

This case presents an additional issue that has not yet been addressed by this Court, which has long reaching effects. The state court amended the temporary restraining order upon the intervention of the state to allow Petitioner only to sell the property to one non-profit organization, under the terms of an expired sales agreement, and only if the proceeds from the sale would go into the court's registry. This is an important issue that must be addressed by this Court because failure to do so will condone the state making its own determinations as to whom it is acceptable to sell your property to.

FACTUAL BACKGROUND

Petitioner Florence H. Alexander owns in fee simple, a 44 acre campus with 17 buildings on the land in Forsyth, Monroe County, Georgia. This property, formerly known as Tift College, was purchased December 28, 1994 from Mercer University, Inc. with an initial cash payment of approximately $3,000,000.00 from her personal funds and a $2,500,000.00 personal note that was due in 12 months. At the closing, a limited warranty deed conveyed the property to "Florence Hicks Alexander." In February, 1995, Petitioner satisfied the note with cash payments of $2,500,000.00 and interest from her life savings.

Ebon Foundation, a District of Columbia non-profit corporation, leased the 44 acre campus from Petitioner in January 1995. On January 16, 1995, Ebon Foundation's Board of Directors acknowledged that the Petitioner owned the property and agreed to take all necessary steps to operate a K-12 residential school known as Ebon International Preparatory Academy (Ebon Academy), and accordingly, submitted an

application to transact business in the State of Georgia. On January 23, 1995, Lewis Massey, the Georgia Secretary of State, approved the application for Ebon Foundation to transact business in the State of Georgia under its foreign corporation laws.

On or about March 17, 1995, Ebon Foundation amended its Articles of Incorporation to authorize it to operate and maintain an educational institution known as Ebon Academy. On April 4, 1995, the District of Columbia approved the amendment and Ebon Foundation opened its initial Ebon Academy fall semester in September, 1995.

The 5-year lease between Petitioner and Ebon Foundation provided that Ebon Foundation was to pay Petitioner $50,000.00 per month with Petitioner waiving the rental payment from January 1, 1995 until August 31, 1995 in order to assist Ebon Academy in becoming financially viable. The lease also provided an option for Ebon Foundation to purchase the buildings and equipment for $3,000,000.00 if Ebon Foundation was not in default of the lease. Ebon Foundation was unable to ever obtain a bond or any other financing to purchase the buildings and/or land, and therefore, never exercised the option and never purchased the campus from Petitioner. During the entire year and a half that Ebon Foundation operated Ebon Academy, Ebon Foundation never paid Petitioner any rent. Notwithstanding the nonpayment of rent, Petitioner contributed millions of dollars of her personal funds to help Ebon Academy succeed.

In March 1995, Ebon Foundation submitted an exempt property tax application to the Monroe County Board of Tax Assessors in an attempt to reduce Ebon Academy's expenses, which by that time, Ebon Academy was experiencing severe financial problems. The application indicated that Petitioner owned the campus fee simple and leased the campus to Ebon Foundation to operate a private K-12 school. To eliminate potential control problems identified by the Monroe County Board of Tax Assessors, Petitioner agreed to modify the lease,

including eliminating Petitioner's ability to terminate the lease. A litany of correspondence between the Monroe County Board of Tax Assessors, Michael Bowers, Attorney General of Georgia, and the Attorney General's staff, indicated that Petitioner personally owned the property. The Monroe County Board, based on the advise of the Attorney General's office, denied the Application. This compounded Ebon Foundation's financial problems in operating Ebon Academy.

Despite Petitioner's generosity in providing millions of dollars to Ebon Foundation and the efforts that resulted in Ebon Foundation receiving full accreditation in September, 1996, Ebon Foundation found itself with no choice, in January 1997, but to close Ebon Academy because it was not successful in its fund raising activities, parents failed to pay their children's tuition, and there was low student enrollment. In January 1997, Ebon Foundation's Board of Directors determined that the lease with Petitioner would be terminated effective February 1, 1997, and vacated from the campus. On February 20, 1997, Ebon Foundation submitted an Application for Withdrawal from conducting business in the State of Georgia. In February, 1997, Lewis Massey, the Secretary of State, approved the application and thereby, acknowledged that Ebon Foundation could no longer operate in the State of Georgia.

Several weeks after Ebon Foundation decided to terminate their lease with Petitioner, the General Missionary Baptist Convention of Georgia, Inc., a non-profit organization, made an unsolicited offer to purchase the campus to establish a headquarters and a primary and secondary school. The March 4, 1997, all cash $18,000,000.00 sales agreement had a concurrent closing date and termination date of April 28, 1997. The sales agreement indicated that "time was of the essence."

In March, 1997, seven families, most with delinquent tuition balances, brought a lawsuit in the Superior Court of Monroe County, State of Georgia against Ebon Foundation and Petitioner. The families sought to obtain transcripts, personal property left on campus, return of $200, and emotional distress

from the closing of Ebon Academy after the fall semester for the 1996-1997 Academic year.

On February 20, 1997, a letter from Petitioner was mailed to Joyce Oatman, which indicated, in part, that her appointment to Ebon Foundation's Board of Directors was terminated. On April 24, 1997, Ms. Oatman, purportedly representing Ebon Foundation as a director, and her attorneys met with the Georgia Superior Court Judge *ex parte* and persuaded him to approve a temporary restraining order to prevent the April 28, 1997 sale of Petitioner's property. The Georgia Superior Court Judge granted the Rule Nisi Temporary Restraining Order (TRO) without notice, ex parte and before any documents were filed by Ms. Oatman to intervene in the case. *See Appendix G, Rule Nisi Temporary Restraining Order.*

The April 24, 1997, TRO enjoined Petitioner from selling her property to anyone. Petitioner was in her resident State of Florida when the TRO was granted and she learned of the action a few days later as a result of a televised press conference arranged by Ms. Oatman's attorneys at which time they touted preventing Petitioner from selling her property to the General Missionary Baptist Convention of Georgia, Inc. At the time the TRO was granted, the Georgia Superior Court Judge scheduled a hearing for May 22, 1997. Upon learning of the action, Petitioner requested a hearing on the TRO to be scheduled immediately. However, the Georgia Superior Court Judge did not schedule a hearing until April 30, 1997, which was after the closing date and the termination of the $18,000,000.00 sales contract.

On the morning of the April 30, 1997 hearing, Michael Bower, the Georgia Attorney General, and Lewis Massey, the Georgia Secretary of State, filed a motion to intervene, a brief in support of a preliminary injunction, and a complaint. In the complaint, Michael Bowers and Lewis Massey are seeking to take the real property and buildings from Petitioner by a scheme of declaring Ebon Foundation a charitable trust. In support of the injunction against Petitioner selling her property,

the state claimed that it was needed to protect Georgia's interest in the assets of Ebon Foundation, in the event of dissolution of Ebon Foundation, and to assure that Ebon Foundation's non-profit assets were used for non-profit purposes.

During the April 30th hearing, the Georgia Superior Court Judge only heard evidence concerning the issue as to whether or not Ms. Oatman should be allowed to intervene. Without evidence or argument on the TRO, the Georgia Superior Court Judge modified the TRO at the hearing[1] to only allow Petitioner to sell the property to the defunct purchaser, General Missionary Baptist Convention of Georgia, Inc. and only under the expired contract. *See Appendix F, Oral Opinion of the Superior Court for Monroe County, Georgia.* The judge also modified the original TRO by requiring all monies to be paid to a receiver, who would pay it into the registry of the Superior Court of Monroe County, Georgia. *See Appendix F, Oral Opinion of the Superior Court for Monroe County, Georgia.* The General Missionary Baptist Convention of Georgia, Inc. informed Petitioner that they would not be purchasing the property because the contract had expired.

On May 22, 1997, the Superior Court for Monroe County held a hearing on the TRO. The Georgia Superior Court Judge listened to the evidence presented by the State of Georgia and then concluded that he was going to maintain the TRO. *See Appendix D, Oral Opinion of the Superior Court for Monroe County, Georgia.* This was before Petitioner was ever given a chance to present evidence or argument. After Petitioner's attorney reminded the Judge that Petitioner wished to present evidence on the issue, the Geogia Superior Court Judge indicated that he was going to still maintain the TRO, but that if Petitioner wanted to present evidence on the TRO, she could do so on the following day. *Id.* At the May 23, 1997, before

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1 The decision was reduced to writing on May 23, 1997 and is reproduced in Appendix E.

the completion of Petitioner's testimony and the presentation of all evidence, the Georgia Superior Court Judge again indicated that he was inclined to continue the TRO, and with that understanding he would allow Petitioner to present an argument on the TRO. *See Appendix C, Oral Opinion of the Superior Court for Monroe County, Georgia.*

PROCEEDINGS BELOW

During the May 22nd and 23rd hearing, Petitioner first raised the issue concerning the failure to require a bond, which is a due process defect as discussed below.
During the May 23, 1997 hearing, Petitioner first raised the issue on the matter of the state improperly taking her property:

> "Q If this injunction takes place, will the sale go through?
> A No, not at all, because they don't even know – I just heard yesterday that the state is going to take my property from me. They don't know if they buy it if the state will take it from them."

However, the Georgia Superior Court Judge disregarded these arguments and continued the injunction. *See Appendix C, Oral Opinion of the Superior Court of Monroe County, Georgia and Appendix B, Order of the Superior Court of Monroe County, Georgia.*

On June 2, 1997, the Georgia Superior Court Judge signed a Certificate of Immediate Review to the Georgia Supreme Court. On June 12, 1997, Petitioner filed an Application for Interlocutory Appellate Review with the Georgia Supreme Court challenging the injunction and other grounds that were not directly appealable to the Georgia Supreme Court. The Application was granted. Petitioner had also filed an Appeal of the injunction to the Georgia Supreme Court.

Throughout various stages of the appeal process, Petitioner raised the Fifth Amendment issue and lack of due process, including failure to give notice, lack of posting security to protect Petitioner, and failure to provide a fair hearing. In the Application for Appellate Review and the Brief submitted to the Georgia Supreme Court, Petitioner challenged the failure to require a bond. Furthermore, in the Application for Appellate Review Petitioner stated:

> "On this date, the court granted a Rule Nisi and Temporary Restraining Order against Dr. Alexander and Ebon Foundation to prevent the sale of the real property located in Forsyth, GA and all personal property located on such real property without notice to defendants."

In Petitioner's September 4, 1997, Emergency Motion for Stay and Supersedeas, Petitioner indicated:

> "The Court below manifestly abused its discretion in issuing, and leaving in place, a restraining Order which has the effect of impairing the contract between seller and buyer, which caused daily financial losses to the owner and does not in any way balance the competing equities of Claimants with the financial losses to the owner and does not in any way balance the competing equities of Claimants with the financial disaster caused to Dr. Alexander, the Defendant....
>
> Why should her Fifth Amendment Due Process Right to the property be impaired when such a convenient remedy stands available and of sufficient worth to bond her for all possible damage that the parties and State can claim?"

In Petitioner's September 4, 1997 Brief in Support of Emergency Stay and Supersedeas, Petitioner indicated:

> "Movant argues that, while she is a private person not in public office, she is a property owner being deprived of her right to seek the highest price obtainable for the property to retire debts that she incurred in her attempt to establish the charitable institution, the school, by the peculiar, particular and onerous facts and circumstances of her case and that she will be deprived of her rights before either the Court below or the Supreme Court can hear a full and fair presentation of all evidence in the case, and before the Supreme Court of Georgia can correct any errors of law or manifest abuse of discretion in the Court below."

In Petitioner's September 18, 1997 brief, Petitioner again raised the various issues within this writ, and stated:

> "Reversal of the decision by the trial court to enjoin the sale will properly balance the interests of all parties and will remove the chilling effect that the court's decision has had on an existing sales contract and the continuing constraint of Appellant's Fifth Amendment right to contract and to sell her property...
>
> On April 24, 1997, the Monroe County Superior Court granted Appellee Oatman's Motion to Intervene and Motion for Injunctive Relief and Restraining Order, *ex parte* and without notice, and thus prevented the sale of the 44 acre campus..."

In this brief, Petitioner also challenged the failure of the state to comply with O.C.G.A. § 9-11-65(b)(1) requirements for granting a TRO ex parte, without notice, and without a hearing. As discussed below, the failure to comply with this statute resulted in unconstitutional violation of due process.

The Georgia Supreme Court denied Petitioner's appeal and upheld the decision of the Georgia Superior Court Judge by finding, in part, that the TRO and subsequent interlocutory injunction were issued in compliance with the requirements of O.C.G.A. § 9-11-65, that Petitioner was served with the TRO and was given an opportunity to be heard at the subsequent hearings. Petitioner filed a motion for reconsideration and challenged the findings pertaining to notice and a hearing. The Georgia Supreme Court denied the Motion for Reconsideration without any findings, corrections of errors, or rationale for its dismissal. Petitioner filed a Second Motion for Reconsideration, but this also was denied on May 1, 1998.

REASONS FOR GRANTING THE WRIT

I. This Case Involves A State Court Deciding An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court – Whether The State Court Must Provide Notice and A Hearing Pursuant To Due Process Before Enjoining A Property Owner From Selling Her Property?

Being free to sell one's own property to whomever one chooses is a fundamental right of all property owners. This Court has long since held that the Fourteenth Amendment applies to the right to acquire, enjoy, own and dispose of property. *Shelley v. Kraemer*, 334 U.S. 1, 10-11 (1948); *Buchanan v. Warley*, 245 U.S. 60, 74 (1917). This Court has also long held that the action of state courts and of judicial officers is to be regarded as action of the State within the

meaning of the Fourteenth Amendement. *Shelley*, 334 U.S. at 14.

This Court has recognized that an essential principal of due process is that a deprivation of life, liberty and property is "preceded by notice and opportunity for a hearing appropriate to the nature of the case." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) *citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). This Court has also recognized that the "root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Loudermill*, 470 U.S. at 542 *citing Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) and *Bell v. Burson*, 402 U.S. 535, 542 (1971).

In this case, no notice and no hearing was given before the Georgia Supreme Court Judge issued a TRO on April 24, 1997, enjoining Petitioner from selling her property. The Georgia Supreme Court ratified this deprivation of due process simply by finding that the TRO complied with the statutory provision for granting a TRO without notice and a pre-deprivation hearing. This is contrary to this Court's decisions concerning the need for notice and a pre-deprivation hearing.

This Court clearly recognizes that a temporary, non-final deprivation of property is nonetheless a deprivation in terms of the Fourteenth Amendment. *Fuentes v. Parham*, 407 U.S. 67, 85 (1972) *rehearing denied* 409 U.S. 902. This Court has found that a post-deprivation hearing and a procedure to recover property, even within three days, was still a violation of due process because a hearing was not provided before a property owner was deprived of his property. *Fuentes*, 407 U.S. at 85-86. This Court also recognized that the Fourteenth Amendment's due process clause also applied to safeguard the rights to property, even where ownership is disputed. *Id.*

This Court has recognized that there are circumstances when an *ex parte* issuance, without notice, of a temporary restraining order of short duration can be issued, but such an order will not

be sustained where no showing is made that it is impossible to serve or to notify the opposing parties and to give them an opportunity to participate. *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 180-81 (1968) (This Court held that a 10-day restraining order infringing on the First Amendment, issued *ex parte*, without formal or informal notice to the petitioners, and without any effort to advise them of the proceeding could not be sustained). In this case, there was absolutely no effort made to notify Petitioner to allow her an opportunity to participate in the decision to issue a TRO. The attorney for the intervenor simply indicated in his affidavit that notice was not given because it was "our belief" that if notice is given Petitioner would proceed with the sale before the TRO was obtained. This is inconsistent with the Court's recognition in *Carroll*, 393 U.S. 180-181, of the importance to show an effort to notify Petitioner before issuing a TRO. It goes contrary to the principals of due process to abridge Petitioner's right to notice and a hearing on the "belief" that she would do something.

In *Krohn-Hite Corporation v. Berube*, 372 F.Supp. 1262 (D.Ma. 1974), the plaintiff challenged the constitutionality of the *ex parte* granting of a temporary restraining order, which had the practical effect of an attachment of its bank account by the state court pursuant to a state statute. Plaintiff, therein, like Petitioner, herein, asserted that the denial of notice and a hearing deprived it of due process of law as guaranteed by the Fourteenth Amendment. *Id.* In *Krohn-Hite*, *supra*, the court recognized that there was a federal constitutional violation of due process when the statute for issuing *ex parte* temporary restraining orders was not followed. The Massachusetts statute, Mass. G.L. c. 214, § 9, in *Krohn-Hite*, 372 F.Supp. at 1264, provided that:

> No temporary restraining order shall be granted without notice to the opposite party, unless it shall clearly appear from specific facts, shown

> by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice.

The court found that the statute was not followed because there were no specific facts touching upon "immediate or irreparable harm" and therefore, there was a violation of plaintiff's due process rights. *Krohn-Hite*, 372 F.Supp. at 1264.

The Georgia statute, in this case, similarly provides:

> (b) *Temporary restraining order; when granted without notice; duration; hearing; application to dissolve or modify.* A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:
> (1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damages will result to the applicant before the adverse party or his attorney can be heard in opposition; and
> (2) The applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

O.C.G.A. § 9-11-65(b).

The granting of the TRO did not comply with the requirements of the Georgia statute, and is, therefore, also a violation of Petitioner's due process rights. The statute requires specific facts showing immediate and irreparable injury in an affidavit or verified complaint. The only affidavit

produced was by intervenor's attorney, who simply stated that: "If this transfer and sale occur, the parties will be irreparably harmed." No facts as to how Ebon Foundation would be harmed appears in the affidavit. In the intervenor's unverified complaint, there are also no specific facts specified to show there is immediate or irreparable injury. There were also simply conclusory statements that the intervener feared that Petitioner would convert the funds received from the sale of Ebon Foundation's assets and that Petitioner had converted for her personal use Ebon Foundation's assets and funds. There were no facts presented how the sale of Petitioner's own property would irreparably harm Ebon Foundation. Like, *Krohn-Hite*, 372 F.Supp. at 1264, the state court's actions in issuing a TRO under the evidence before them was a clear violation of Petitioner's due process rights.

Petitioner urges this Court to grant this Petition because the state court's decision was contrary to relevant U.S. Supreme Court decisions, which provide that property owners must be given notice and a hearing before depriving the property owner of the right to dispose of her property.[2]

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2 This Court has recognized that on occasion government may act without providing "advance procedural safeguards" where "the potential length or severity of the deprivation does not indicate a likelihood of serious loss and where the procedures underlying the decision to act are sufficiently reliable to minimize the risk of an erroneous determination. *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 19 (1978) *citing Ingraham v. Wright*, 430 U.S. 651, 680 (1977) and *Matthews v. Eldridge*, 424 U.S. 319, 339-349 (1976). The state court made no determination as to the effect of the TRO on Petitioner prior to issuance of the TRO. *See Appendix G, Rule Nisi and Temporary Restraining Order*. If it had done so, it would have found that the deprivation was severe as Petitioner was prevented from selling her property. Furthermore, the underlying procedures for granting a TRO were not reliable because the procedures were not followed since the complaint was not verified, the affidavit was signed by an attorney with no first hand knowledge of facts, and neither provided any facts demonstrating irreparable harm or why Petitioner's property should be enjoined as required by O.C.G.A § 9-11-65(b). This Court has recognized that only rare circumstances justify depriving property owners a property right, in such case there has been

II. This Case Also Involves A State Court Deciding An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court – Whether Due Process Requires A Meaningful Hearing?

The Fourteenth Amendment requires an opportunity for a hearing "granted at a meaningful time and in a meaningful manner." *Boddie*, 401 U.S. at 378. The hearing must be a real one, and not a sham or a pretense. *Palko v. State of Connecticut*, 302 U.S. 319, 327-28 (1937). This Court recognizes that the due process clause entitles a person to an impartial and disinterested tribunal. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242-43 (1980).

In *Jerrico*, 446 U.S. at 242, this Court indicated that:

> "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Matthews v. Eldrige*, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976). At the same time, it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done,' *Joint Anti-Facist Committee v. McGrath*, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in

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necessary to secure an important governmental or general public interest, and state intervention in a private dispute does not reach such a level. *Fuentes*, 407 U.S. at 92-93. Accordingly, Petitioner urges this Court to grant this Petition because the state court's decision was contrary to relevant U.S. Supreme Court decisions.

> which he may present his case with assurance that the arbiter is not predisposed to find against him."

A meaningful hearing was not held in this case because it occurred after the deprivation. In *Fuentes*, 407 U.S. at 81-82, this Court recognized:

> "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred."

The hearing, in this case, was not conducted at a meaningful time because it was held after the expiration of the contract to sell the property. Therefore, the hearing occurred after the deprivation had arisen. Accordingly, Petitioner's procedural due process rights were denied.

The hearings were also not meaningful in their content. An impartial tribunal is an essential element of a due process hearing. *Miller v. City of Mission of Kansas*, 705 F.2d 368 (10th Cir. 1983). The *Miller* court further opined that "[a] tribunal is not impartial if it is biased with respect to the factual issues to be decided at the hearing." *Id.* at 372. The *Miller* court observed that the trial court concluded that the public hearing in that case was unfair because the hearing officer had a prejudiced mind when he went into that case. *Id.* at 372. *See also Stanton v. Mayes, et. al.*, 552 F.2d 908, 915 (10th Cir. 1977) *citing In re Murchison*, 349 U.S. 133, 139 (1955);

Texaco, Inc. v. F.T.C., 336 F.2d 754, 759-60 (D.C. Cir. 1964); *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).

The statements and actions made by the Georgia Superior Court Judge during the hearings, including reaching a decision prior to the taking of all evidence and basically indicating that Petitioner's testimony was not necessary because the court was inclined not to change its mind, are clear indications that the Georgia Superior Court Judge did not possess the neutrality requirement which is a prerequisite to a fair hearing.

During the first hearing on April 30, 1997, no evidence concerning the TRO was presented and no argument was allowed concerning the issue. *See Appendix F, Oral Opinion of the Superior Court for Monroe County, Georgia.* During the second hearing, the Georgia Superior Court Judge clearly indicated that he was predisposed to find against Petitioner before allowing Petitioner to present any evidence and again before allowing Petitioner to present an argument.

On May 22, 1997, the Superior Court for Monroe County held a hearing on the TRO. The Georgia Superior Court Judge listened to the evidence presented by the State of Georgia and then concluded:

> " – well, we will just have to play it by ear and see how it goes, but it is my position today that the injunction or the temporary restraining order is going to be continued in its present condition with the expansion of, we will include the Capital City Bank accounts, arts fund raising, escrow student account, and PTA Booster Club, and the Monroe County Bank account, 0204867, which I believe is in the name of Ebon Foundation."

See Appendix D, Oral Opinion of the Superior Court for Monroe County, Georgia. The Georgia Superior Court Judge made this decision without first giving Petitioner any

opportunity to present evidence or argument. After Petitioner's attorney reminded the Georgia Superior Court Judge that Petitioner wanted to present evidence, the Georgia Superior Court Judge indicated:

> "...the idea of the injunction is to maintain the status quo of the parties. That is what I'm going to do.
> Now, if y'all want to present evidence, you are going to have to probably do it tomorrow in Monroe County because I'm running out of time today to basically allow this hearing to continue..."

See Appendix D, Oral Opinion of the Superior Court for Monroe County, Georgia.

On May 23, 1998, Petitioner was allowed to place some evidence into the record on the TRO issue. After a long recess and bench conference, the Georgia Superior Court Judge indicated:

> "Mr. Wangerin [Petitioner's attorney], let's go ahead and hear your argument, since we have clarified that Plaintiffs are willing and the Intervenors are willing to forgo cross examination of Dr. Alexander, based on the Court's representation to them and to you and the other counsel that the Court is not inclined to alter or modify the temporary restraining order/injunction beyond what it's already agreed to do and has yet to sign an order on, but which will be signed today.
> And with that understanding, you have an argument that you would like to put on the record. Is that correct?"

See Appendix C, Oral Opinion of the Superior Court for Monroe County, Georgia.

Clearly, Petitioner was deprived of a meaningful hearing as defined by this Court. Accordingly, Petitioner urges this Court to grant the Petition because the state court's decision is contrary to relevant U.S. Supreme Court decisions.

III. This Case Also Involves A State Court Deciding An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court And Federal Law – Whether Posting Security Is The Minimum Required For Due Process?

The Georgia statute is in conflict with federal law, which requires a consideration of the requirement of a bond at a minimum. Fed.R.Civ.P. 65; *Roth v. Bank of the Commonwealth*, 583 F.2d 527 (6th Cir.1978). The Georgia statute gives the trial judge discretion to grant a bond. If Respondent's proof is strong enough to require an injunction without notice, the state must force them to give security to a defendant to cover the payment of costs and damages which defendants may incur or offer if found to have been wrongfully enjoined. To do otherwise, as the State of Georgia allows, is to bring this issue into direct conflict with Federal Procedure and the holdings of this Court. In *Detroit &c. RY v. Michigan R.R. Comm.*, 240 U.S. 564 (1916), this Court held, inter alia, that the granting of an order or writ to maintain or restore the status quo pending the outcome of existing litigation, does not deny due process of law when the relief is granted upon condition that ample security be given to make good any loss that may be sustained thereby. Federal courts have found orders restraining defendants from disposing of assets invalid where such orders did not require a bond as provided by Federal Rules of Civil Procedure, Rule 65. *Telex Corp., v. International Business Machines, Corp.*, 464 F.2d 1025 (8th Cir. 1972); *Pioche Mines Consolidated, Inc. v. Dolman*, 333 F.2d 257 (9th Cir. 1964). *See*

also Fuentes, 407 U.S. at 83, in which this Court recognized that a bond, as a matter of constitutional principle, is no replacement for the right to a prior hearing, which is the only truly effective safeguard against arbitrary deprivation of property. In the instant case, there is no such saving grace to the clear and serious deprivation of petitioner's property rights. Accordingly, Petitioner urges this Court to grant this Petition to decide this important constitutional question.

IV. This Case Also Involves A State Court Deciding An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court – Whether Preventing A Property Owner To Dispose Of Property Is A Taking Under The Fifth Amendment?

In *Hodel*, 481 U.S. at 717-18, this Court found that the destruction of the right to devise private property violates the Fifth Amendment. The Court recognized that not all of the property rights were taken but found that this was still a property right within the Fifth Amendment, and stated:

> "Of course, the whole of appellees' decedents' property interests were not taken by § 207. Appellees' decedents retained full beneficial use of the property during their lifetimes as well as the right to convey it *inter vivos*. There is no question, however, that the right to pass on valuable property to one's heirs is itself a valuable right."

Hodel, 481 U.S. at 704.

This Court has also stated:

> "It is conceivable that [the term "property" in the Just Compensation Clause] was used in its

> vulgar and untechnical sense of the physical thing with respect to which the citizen exercises rights recognized by law. On the other hand, it may have been employed in a more accurate sense to denote the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and *dispose* of it. In point of fact, the construction given the phrase has been the latter. *United States v. General Motors Corp.*, 323 U.S. 373, 377-78 (1945). [Emphasis added]

Ruckelshaus v. Monsanto, 467 U.S. 986, 1003 (1984).

Consistent with this Court's decisions, the destruction of the right to sell private property, in this case, also violated the Fifth Amendment and constituted a taking for public use[3] without just compensation.

The fact that the TRO was temporary or limited in duration does not affect the applicability of the Fifth Amendment. A taking can be limited in duration, or temporary, as opposed to permanent. In *First English Evangelical Lutheran Church*, 482 U.S. at 318, this Court stated that:

> "temporary' takings which, as here deny a landowner all use of his property, are not

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3 The state court did not dispute that the taking was for public use. The Georgia Superior Court Judge indicated:

> "This the money will be protected. It is the duty of the Court to protect those funds. They are public funds, in essence, while they are in the registry of the Court, I guess. That is the way I am going to deem it since it is a nonprofit corporation that is involved somewhat."

See Appendix F, Oral Opinion of the Superior Court for Monroe County, Georgia.

> different in kind from, permanent takings, for which the Constitution clearly requires compensation."

Accordingly, Petitioner urges this Court to accept the Petition to correct the state court's decision to enjoin Petitioner from selling her property without just compensation.

V. This Case Involves An Important Constitutional Question That Should Be Resolved By This Court – Whether Only Allowing A Property Owner To Sell His Property To A Particular Organization, Under An Expired Contract And With All Proceeds Being Paid Into The Court's Registry Is A Taking In Violation Of The Just Compensation Clause Of The Fifth And Fourteenth Amendments?

The state court's injunction imposed at the insistence of the state should constitute a taking under the Fifth Amendment. The injunction only allows Petitioner to sell her property to one organization, only under an expired sales agreement, and only if Petitioner places the proceeds into the state court's registry. *See Appendix E, Order of the Superior Court for Monroe County, Georgia.* There are cases dealing with land-use restrictions. *See e.g., Nollan v. California Coastal Commission*, 483 U.S. 825, 834-42 (1987)(allowing beach access in exchange for granting a land-use permit) and cases cited therein. However, there are very few cases dealing with land conveyance restrictions. The case most analogous is *Hodel*, 481 U.S. at 718, in which, this Court found a federal law to be unconstitutional that deprived a person of the right to devise private property. The law required certain private property to escheat to an Indian tribe. *Id.* at 704. The Court recognized in *Hodel*, 481 U.S. at 714, several factors to consider when determining there is a taking, including the economic impact of the regulation, its interference with

reasonable investment backed expectations, and the character of the governmental action. The economic impact in this case is clearly great as it concerns an $18,000,000.00 piece of property. *See Hodel*, 481 U.S. at 714 ($2,700 and $1,816 escheatable interests were considered not trivial sums). In this case, there is an investment-backed expectation that Petitioner could sell her property to whomever she chooses to obtain some, if not all of her investment into the property back. Placing the restriction as to whom Petitioner can sell the property, under an expired and unviable contract prevents Petitioner from ever receiving an investment return on her personal moneys used to purchase the property. This case, like *Hodel*, 481 U.S. at 716, has extraordinary state action in that they are infringing on Petitioner's right to dispose of her property to whomever she chooses. The effect of the injunction and the state's action is that Petitioner is prevented from selling her property to anyone because the sales agreement had expired and Petitioner could not enforce the sales agreement. Therefore, the injunction was in effect an injunction preventing Petitioner from selling her property to anyone as the original TRO, and should be considered a taking. Petitioner urges this Court to accept this Petition so that this important federal question can be resolved.

CONCLUSION

Petitioner, therefore, urges this Court to grant the writ petitioned for in this case to correct the state court's decision that is contrary to this Court's well settled decisions that due process requires notice and a meaningful hearing before the deprivation of property rights, and that the prevention of a property owner to dispose of her property is a taking without just compensation. Furthermore, this Court must grant the writ to determine whether the state court's and state's actions to restrict to whom the property can be sold is a taking under the Fifth Amendment.

Respectfully submitted,

James W. Cobb
Counsel for Petitioner
James W. Cobb & Associates, P.C.
803 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 387-1100

June 30, 1998

APPENDIX A

IN THE SUPREME COURT OF GEORGIA

S97A2027. EBON FOUNDATION, INC. v. OATMAN et al.
S97A2028, S97A2030. ALEXANDER v. CHAPMAN et al.
(two cases)

THOMPSON, Justice

These consolidated cases are before the Court on direct appeal from the grant of an interlocutory injunction and appointment of a receiver.

In 1994, Florence Hicks Alexander purchased the former Tift College campus in Forsyth, Georgia, and, along with others, established the Ebon Foundation, a non-profit corporation, incorporated under the laws of the District of Columbia for educational purposes. Alexander served as president and chairperson of the board of directors of Ebon Foundation, which obtained tentative classification by the IRS as a private foundation, thus allowing donors tax deductible status. In 1995, Alexander leased the 44-acre campus to Ebon Foundation and in September 1995, Ebon Foundation began operation of Ebon Academy, a kindergarten through twelfth grade school, on the campus.

In January 1997, students and parents were informed that the school had been closed due to financial difficulties and they were told to vacate the premises immediately. Shortly thereafter, a group of students and their parents (Chapman et al.) filed a lawsuit against Alexander and Ebon Foundation seeking damages for breach of contract, intentional infliction of emotional distress, fraud, and conversion.

Joyce Oatman, a director of Ebon Foundation, moved to intervene to bring a derivative action on behalf of Ebon Foundation based on Alexander's alleged mismanagement of the business. At the same time, Oatment sought a TRO to

prevent Alexander from consummating a pending contract for the sale of the school property (scheduled for closing four days later), based on allegations that Alexander wrongfully appropriated the assets of Ebon Foundation to her personal use and would dissipate the proceeds of the sale to the detriment of Ebon Foundation. The Attorney General and Secretary of the State of Georgia also moved to intervene – the former to ensure that Ebon Foundation's assets upon dissolution are committed to non-profit purposes, and the latter as the proper party where violations of the Georgia Charitable Solicitations Act of 1988, OCGA § 43-17-1 et seq., are alleged. The State joined Oatment's request for a TRO.

The trial court granted a TRO preventing Alexander from consummating the sale of two parcels of property (the 44-acre school tract and another 98-acre tract) for a period of 30 days. After hearing from both parties, the trial court modified the TRO, to permit the sale of the school property under the supervision of a receiver. In a subsequent order, the court allowed intervention by the State of Georgia and by Joyce Oatman; allowed Oatman's proposed derivative action to be filed; released the 98-acre parcel from the TRO; and, denied Alexander's motion to dismiss the underlying complaint for lack of jurisdiction. Finally, the court entered an order extending injunctive relief during the pendency of the litigation.[1]

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1 In Case No. S97A2027, Ebon Foundation appeals from the grant of the interlocutory injunction and the order permitting Oatman and the State of Georgia to intervene. In Case Nos. S97A2030 and S972028. Alexander appeals from the same orders. Since the briefs contain virtually duplicative enumerations of error and arguments, the contentions of the parties will be treated jointly.

Intervention

1. Alexander and Ebon Foundation challenge the order allowing inter-vention by Oatman and by the State of Georgia, on several grounds.

(a) First, appellants assert that the trial court erred in granting the motions to intervene *ex parte*. See *Gregory v. Tench*, 138 GA. App. 2[illegible]25 SE2d 753) (1976). The record shows that the trial court granted the motions, *subject to* any properly supported objections by applicants. Shortly thereafter, hearings were conducted during which all parties were represented by counsel and were given a full opportunity to respond to the interveners' requests and to show why the earlier ruling should be set aside. After hearing argument and evidence and considering briefs of the parties, the court restated its previous ruling by written order. Any harm in initially allowing the intervention *ex parte* was cured by the subsequent proceedings.

(b) It is also asserted that the trial court erred in allowing Oatman to intervene to bring a derivative action on behalf of Ebon Foundation because the notice requirements of OCGA § 14-2-742 had not been satisfied. That Code section provides that a shareholder derivative proceeding may not be commenced until 90 days after written demand has been made upon the corporation to take suitable action. See also *Dunn v. Ceccarelli*, 227 Ga. App. 505 (489 SE2d 563) (1997). However, two exceptions to the 90-day waiting period are contained in the statute – if the shareholder has been "notified that the demand has been rejected by the corporation," or "if irreparable injury to the corporation would result" from the 90-day delay OCGA § 14-2-742 (2). Oatman asserted that immediate action was necessary because a sale of the property was imminent and Alexander was likely to have retained the profits. As such, the trial court acted within its discretion in waiving the 90-day waiting period and allowing the derivative action to proceed.

(c) Appellants further submit that the intervenes failed to meet their burden of establishing a right of intervention under OCGA § 9-11-24 (a) (2). As required by the Code section, an intervener must establish: "an interest relating to the property or transaction which is the subject matter of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." See also *Brown v. Truluck*, 239 Ga. 105 (236 SE2d60) (1977).

Oatman sought to intervene as a director of Ebon Foundation[2] for purposes of bringing a shareholder's derivative action predicated on allegations that Alexander had misappropriated and mismanaged corporate funds, commingled private and corporate funds, and generally treated the corporation as her alter ego. It was further asserted that if a sale of the real property were to take place, Alexander would convert the proceeds of the sale for her personal use, leaving the corporation without assets. When Oatman" motion to intervene was filed, both Alexander and Ebon Foundation were represented by the same counsel in the Chapman lawsuit, and although there appeared to be evidence of misappropriation of corporate funds, Ebon Foundation brought no cross-claim against Alexander. Oatman thus asserted that the interests of the corporation were not adequately represented, and it was established at the evidentiary hearing that Alexander had repeatedly directed the transfer of funds from Ebon Academy's student escrow account to other accounts under her control.

The Attorney General sought to intervene in the proceedings, asserting that, as a charitable, non-profit organization, Ebon Foundation has solicited and received donations in furtherance of its purported educations purposes; that upon dissolution,

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2 Although Ebon Foundation later sought to remove Oatman as a director, it was shown that she served in that capacity at the time the mismanagement was alleged to have occurred, and at time of filing the motion to intervene.

Ebon Foundation's assets must be committed to non-profit purposes; and that the Attorney General is the proper party to protect such interests.

Intervention was sought by the Secretary of State to seek civil sanctions for transactions which are prohibited by the Georgia Charitable Solicitations Act, OCGA § 43-17-13.

The trial court determined that the intervenors have asserted interests relating to the property which is the subject matter of the action, and are so situated that disposition of the action may impair or impede their ability to protect those interests. These findings are supported by the evidence is also apparent that the interests of Ebon Foundation or those of the State were not being adequately represented by the original plaintiffs in the lawsuit. The trial court did not err in ruling that the intervenors satisfied the test of OCGA § 9-11-24. See *Southwest &c Assn. v. Wainwright*, 241 Ga. 355 (2) (245 SE2d 306) (1978).

Notice and hearing

2. The ex parte TRO was granted without notice after a showing that immediate and irreparable injury would result unless relief is granted before Alexander and Ebon Foundation could be heard in opposition, along with a sworn certification by counsel why notice should not be required. See OCGA § 9-11-65 (b) (1) and (2). The resulting TRO was served upon Alexander and Ebon Foundation along with a rule nisi ordering them to appear at a hearing within 30 days. All parties and their counsel attended the subsequent hearings and were given an opportunity to be heard. Thus, the TRO and subsequent interlocutory injunction were issued in compliance with the requirements of OCGA § 9-11-65.

Although Alexander submits that service of the underlying lawsuit was not perfected under OCGA § 9-11-4(d)(7), "[t]here is no requirement of personal service prior to the issuance of an interlocutory injunction. Notice to the adverse party is all that is required by OCGA § 9-11-65 (a)(1)]" *Consortium &c. Co. v.*

Mutual Am. Corp. 246 GA. 346, 348 (3) (271 SE2d 488) (1988). Alexander does not assert defective notice, And any complaint directed to lack of personal jurisdiction over her as a nonresident under OCGA § 9-10-91 was not ruled on below and will not be considered here.

Issuance of the injunction

3. "A trial court has the discretion to grant an interlocutory injunction to perserve the status quo and balance the conveniences of the parties pending final adjudication. [Cit.] This court will not disturb that discretion unless it is abused or there is no evidence to support the ruling. [Cit.] [Cit.]" *Rife v. Corbett*, 264 GA. 871 (455 SE2d 581) (1995). See also OCGA § 9-5-8.

(a) Oatman's verified complaint for a TRO satisfied the requirements of OCGA § 9-11-65 (b) (1).

(b) Appellants assert that the trial court abused its discretion in issuing the TRO which encompassed Alexander's personal property and thus exceeded the scope of what was requested. However, Oatman expanded her request at the initial hearing and again in her amended pleadings. By enjoining sale of the realty, including personality situated "on said property." The court merely sought to maintain the status quo. There was no abuse of discretion.

(c) Appellants assert that the trial court abused its discretion in issuing the injunction because an adequate remedy at law exists. However, intervenors showed that there was substantial commingling of corporate and personal assets and that an injunction was the only means of protecting the interests of the parties until those assets could be sorted out by a final adjudication of the various claims. A court may appoint a receiver when any fund or property is in litigation and the rights of the parties may not be otherwise protected. OCGA § 9-8-1; Richardson v. Roland, 267 Ga. 34 (472 SE2d 301) (1996). Compare *Housing Authority v. MMT Enterprises*, 267 Ga.

129(1) (475 SE2d 642) (1996). Appointment of a receiver is specifically authorized incases arising under the Charitable Solicitations Act. OCGA § 43-17-13 (a) (2) (A) (vi).

(d) While the TRO initially prohibited sale of the school property, the court balanced the interests of the parties and modified its order to allow the sale to proceed under the supervision of a court-appointed receiver. Accordingly, the issuance of the injunction did not operate oppressively against the defendants. Compare *Everett v. Tabor,* 119 Ga. 128 (46 SE 72) (1903).

(e) Appellants assert that the trial court erred in failing to require intervenors to post a bond as a prerequisite to the issuance of the injunction. However, under OCGA § 9-11-65(c), the court "*may* require the giving of security" upon issuing a TRO or interlocutory injunction. (Emphasis supplied.) Appellants have not shown that they requested such security, or how they were harmed by the failure to require a bond. We find no abuse of the court's discretion.

Judgments affirmed. All the Justices concur.

DECIDED FEBRUARY 23, 1998 –
RECONSIDERATION DISMISSED APRIL 2, 1998

Equity. Monroe Superior Court. Before Judge McGarity.

Jones, Cork & Miller, H.Jerome Strickland, Jr., for Ebon Foundation, Inc.

Ham, Jenkins, Wilson & Wangerin, Kevin A. Wangerin, C. Nelson Jarnagin, Patrise M. Perkins-Hooker, for Alexander.

Thurbert E. Baker, Attorney General, Daniel M. Formby, Deputy Attorney General, John B. Ballard, Jr., Senior Assistant Attorney General, Debra Golymbieski, Assistant Attorney General, Sullivan & Kight, Leo J. Kight, Jr., for Oatman and Chapman.

APPENDIX B

IN THE SUPERIOR COURT OF MONROE COUNTY STATE OF GEORGIA

TYRE E. CHAPMAN, et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a	:	FILE NO.:
EBON INTERNATIONAL	:	97-CV-150
PREPARATORY ACADEMY,	:	
a foreign corporation, and	:	
FLORENCE HICKS ALEXANDER	:	
as Director of Ebon Foundation, Inc.	:	
And Individually,	:	
Defendants,	:	
v.	:	
JOYCE OATMAN, as Director of	:	
Ebon Foundation, Inc., MICHAEL	:	
BOWERS, in his official capacity as	:	
Attorney General of the State of	:	
Georgia, and LEWIS MASSEY, in	:	
his official capacity as Secretary of	:	
State of the State of Georgia,	:	
Intervenors.	:	

ORDER

The above styled matter having come before the Court on May 22 and 23, 1997 for hearing on interveners Temporary Restraining Order issued by the Court on April 24th, 1997, and modified by the Court on May 23, 1997, and on Interveners Motion To Intervene and the Court having heard evidence thereon, the Court does hereby rule as follows:

The Restraining Order issued by the Court in April and modified by the Court on May 23, 1997, shall remain in full force and effect until this case is resolved by settlement or judgment, except as modified in paragraph 2 of this order.

2.

The property described in Exhibit "A", attached hereto is hereby released from the operation and effect of the restraining order. The property is hereby released from the operation and effect of the Lis Pendens filed in this case on April 24, 1997, pursuant to O.C.G.A. 44-14-610 et. seq.

3.

The motion to Intervene of Michael J. Bowers, in his official capacity as Attorney General, and Lewis Massey, in his official capacity as Secretary of State, is granted.

4.

The motion to Intervene of Joyce Oatman, as director of Ebon Foundation, is granted.

5.

Any party may apply to the Court for modification of this Order upon good grounds shown to the Court.

6.

Further the Court having considered the Motion for Reconsideration of the Motion to Dismiss of Florence Hicks Alexander, said Motion is denied.

So Ordered this 2nd day of June 1997, nunc pro tunc to May 23, 1997.

/s/ Arch W. McGarity
Arch W. McGarity
Superior Court Judge
Flint Judicial Circuit

EXHIBIT "A" TO ORDER DATED JUNE 2nd, 1997, ENTERED IN CIVIL ACTION FILE NO. 97-CV-150, SUPERIOR COURT OF MONROE COUNTY, GEORGIA

NORTHEASTERLY ACREAGE TRACT:

All that tract or parcel of land lying and being in Land Lots 183, 184, 201 and 202 of the 6th Land District of Monroe County, Georgia, containing 98.90 acres according to a plat of a boundary survey prepared for the Corporation of Mercer University by Hugh W. Mercer, Jr., Georgia Registered Land Surveyor No. 1890, dated October 31, 1991, a copy of which is recorded in the Clerk's Office of Monroe Superior Court in Plat Book 18, Page 5, reference to which is hereby made for a more complete and accurate description of the property hereby conveyed.

APPENDIX C

IN THE SUPERIOR COURT OF MONROE COUNTY STATE OF GEORGIA

TYRE E. CHAPMAN, et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a	:	FILE NO.:
EBON INTERNATIONAL	:	97-CV-150
PREPARATORY ACADEMY,	:	
a foreign corporation, and	:	
FLORENCE HICKS ALEXANDER	:	
as Director of Ebon Foundation, Inc.	:	
And Individually,	:	
Defendants,	:	
v.	:	
JOYCE OATMAN, as Director of	:	
Ebon Foundation, Inc.,	:	
Intervenor.	:	

IN OPEN COURT BEFORE
HONORABLE ARCH W. MCGARITY
JUDGE, SUPERIOR COURT
FLINT JUDICIAL CIRCUIT

Transcript of proceedings heard in Monroe Superior Court on the 23rd of May, 1997, before Judge Arch McGarity

COURT'S OPINION – PAGES 58-64

"...THE COURT: All right, we're back on the record after a large bench conference.

Mr. Wangerin, let's go ahead and hear your argument, since we have clarified that Plaintiff's are willing and the Intervenors are willing to forgo cross examination of Dr. Alexander, based on the Court's representation to them and to you and the other counsel that Court is not inclined to alter or modify the temporary restraining order/injunction beyond what it's already agreed to do and has yet to sign an order on, but which will be signed today.

And with that understanding, you have an argument that you would like to put on the record. Is that correct?

MR. WANGERIN: That's correct, Your Honor.

Basically, we just want to put on the record what our reasons are for objecting to the continuation of the temporary restraining order and the legal grounds that we feel that the temporary restraining order should not be issued.

The first issue that was brought up and has been an issue in this case is the issue of service and whether Dr. Alexander has been properly served in this case. We contended that there has been no proper service in this case, and the Court by motion indicated that it believed there was proper service.

The second issue that we brought up is that we do not believe either the State or Joyce Oatman are proper parties or have standing to intervene in this action; or that if they have standing, that this is the type of case, the Plaintiff's case, in which they should be allowed to intervene, meaning that there's not the necessary relation between facts and law which would authorize the Court to permit them to intervene. Obviously, the Court has ruled on that and allowed that intervention. But those two grounds are the beginning grounds that we say the temporary restraining order should not be issued.

On the temporary restraining order itself, we would argue first that both the State and Joyce Oatman have an adequate remedy at law, that being more money damages, and that in this case there's no reason to issue the temporary restraining order since they have that action.

Secondly, we would argue that they have proven there's been no evidence of an irreparable injury to them.

Lastly, on the issue of balancing the conveniences of the parties, we think the evidence shows that Dr. Alexander is facing substantial expenses. I think from the stand today we heard figures in the amount of close to $400,000 a year to maintain this property. There has been no evidence by the Plaintiff's as to the exact amounts which they are basing, or which they present as damages in this case. And we think balancing the conveniences of the parties, that a temporary restraining order should not be issued.

Two other points, the first one being that in the temporary restraining order, we've also tried to clarify for the Court that we have the 44-acre campus property, which EBON Foundation ran the school at. And I think that's the real issue before the Court, is whether EBON Foundation obtained any equitable interest in that property. We also have the 98-acre tract of land, which is an unimproved piece of land, which all the testimony has been was purchased by Dr. Alexander. And there has been no testimony that any foundation funds have been expended on that property, that the EBON Foundation has been involved in that 98-acre tract in any way, or that 98-acre tract is involved in this litigation in any way.

And so we would think at least as to that 98-acre tract, that tract should be sliced off from the temporary restraining order and released so that there's at least that 98-acre tract that she can try and do something with to market to raise some funds or borrow against because, you know, right now, with the TRO on it, I'm not even sure she's going to be able to borrow against that property with claims being made that she might not have title to.

And so, you know, we would ask the Court – she's presented evidence that she's in personal finances, or she's getting into a desperate place where she can't keep security out there on the property. She needs a way to generate some funds. We think there's sufficient security with keeping the campus and the

personal property under the temporary restraining order, if the Court's inclined to do that, and at least allow the 98 acres to be released.

We would, also – the second point would be that under the temporary restraining order, 9-11-65(c), the Court can require security from the Plaintiffs for the Court continuing this temporary restraining order.

Now, we would request – Dr. Alexander has all these expenses that she's incurring and will continue to incur. The Plaintiffs have come in, the State has come in and made some very broad allegations of misapplication of funds; and we think that there should be some security put up by Joyce Oatman and the State as Intervenors to protect Dr. Alexander's interest, if it's found out that none of these claims have any basis.

And so, with that, that's our argument.

THE COURT: Okay. All right. Well, I had I think pretty much clarified that I wasn't going to make any change, but I will also add that there is a fairly long reach of the law for me to hold that 98 acres, especially when we've got the substantial asset of 44. So I'm going to be looking a little closer at that, based on your arguments.

So what I'm going to say is rather than, I am going to rule today, except on the 98 acres, I'm going to take a little closer look at that particular issue and I may very well release it from the restraining order and the lis pendens. If you want to brief that issue, you can, but I just think that so far there's just nothing really tying that in except the initial purchase.

But I'm not going to – I'm going to withhold ruling on that 98-acre issue, but all the rest of it I've already stated on the record. I won't have to say that again, that I'm not granting any relief as to the injunction and the TRO on those issues.

And that I'm saying, dealing with the 98-acre issue now because I want the Plaintiff's to be aware of it, so they can look at it, make a good, hard soul search and say, "Is there really a reason we can hold this up, or are we just wanting to hold this up because our clients want us to hold it up?" You know, if

you just don't think discovery has gone far enough, then, that's fine, I understand that. But if your clients are saying, "No, let's hold their feet to the fire," that's another ruling. You're the attorney's; you're going to have to make the call on what's in your client's best interests, with, of course, their consent. But I want you to be what you are, fine lawyers, and make the call.

But in the meantime, I'm going to look at the issue as to whether or not I really have enough to hold that 98, because I don't know enough about the 98 without having to read a lot of what's already in the record that I haven't read. So, I'll be taking a look at that during this period of the stay..."

APPENDIX D

IN THE SUPERIOR COURT OF MONROE COUNTY
STATE OF GEORGIA

TYRE E. CHAPMAN, et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a	:	FILE NO.:
EBON INTERNATIONAL	:	97-CV-150
PREPARATORY ACADEMY,	:	
a foreign corporation, and	:	
FLORENCE HICKS ALEXANDER	:	
as Director of Ebon Foundation, Inc.	:	
And Individually,	:	
Defendants,	:	
v.	:	
JOYCE OATMAN, as Director of	:	
Ebon Foundation, Inc.,	:	
Intervenor.	:	

TRANSCRIPT OF PROCEEDINGS BEFORE
HONORABLE ARCH MCGARITY, JUDGE,
FLINT JUDICIAL CIRCUIT, PRESIDING
IN MONROE SUPERIOR COURT,
HEARD IN BUTTS COUNTY
MAY 22, 1997

COURT'S OPINION – PAGES 132-161

"... THE COURT: Well, let me just, before we proceed further, let me make sure I've got my issues clarified. I have looked at the restraining order just to make sure what we are dealing with. The restraining order deals only with the sale or conveyance of the real property, plus any personalty located on the property, including but not limited to fixtures, furnishings,

computer, et cetera, and all other matters of personality belonging to or found upon the real property.

Now that is all that is addressed there. I suspect in all this paperwork I've got, someone has filed a motion, or at least a brief in support of expanding that to bank accounts?

MR. MELTON: Not yet.

THE COURT: Not yet.

MR. BRIDGES: I think we should make an oral motion right now because, frankly, I didn't, until these ladies came in today, I thought those accounts were empty.

THE COURT: So did everybody else. Pretty close to it from my notes indicate. But it is a little late to close the barn door after the cow has gotten out. But my understanding of it, and that is why I wanted to clarify this is I had not, we got into this financial information, and I guess that is really twofold, not just that the accounts existed and that there is some monies still left there, but that there was some money moved out of those accounts probably, and the allegation is into accounts where they shouldn't have been moved and utilized to pay bills which they shouldn't have been utilized to pay is my guess.

As to the – let me ask the defendants this. As to the existing four bank accounts that have been stated today, there are only three of those that have any money in them, from my records indicate the arts fund raising, the escrow student account, and the PTA Booster Club account.

Do y'all have any objection to maintaining a restraining order injunction on those three accounts to maintain the status quo?

MS. COOK-LOVE: They are Ebon Foundation's accounts, Your Honor. They will have to speak to it.

MR. STRICKLAND: Your Honor, given the little bit of money that is in there, I don't, I don't think that I do. I have not talked to my client about that, so I'm not sure how they feel about it, so I am reluctant to commit to that. But given the little bit of money, I don't think it is going to be a problem, but I

can't commit today in this hearing that my client doesn't have any objections to it.

THE COURT: Well, I will make a suggestion that in the future you don't show up at a hearing where you don't have authority to represent your client 100 per cent.

MR. STRICKLAND: Well, Your Honor, I have, my client is out in the hallway. I can go speak with him and find out if he has any problem with that.

THE COURT: Okay. Well, that's better. I just don't see any – you either represent your client or you don't. If you can't speak for your client, then get somebody in here who can.

MR. STRICKLAND: I can ask him if he has any objections, Your Honor.

THE COURT: We are talking about the settlement of seventeen hundred bucks is all we are talking about. And we are talking about an eighteen million dollar piece of property. I mean, that is a big difference.

MR. STRICKLAND: I understand that, Your Honor. For Ms. Alexander that is a big difference. For the Foundation that has very little cash account right now, $1,700.00 is significant to us.

THE COURT: I suspect it is. All right, now, the remainder of the injunction deals with two items, basically, two groups, realty and personality located on the realty.

Has there been anything accomplished concerning the primary plaintiffs in this lawsuit getting radios, T.V.'s, computers, things that they allege were their personal property?

MR. SULLIVAN: Your Honor, I have spoken with several different plaintiffs, that most of them were able to get most of their things. Some of them could not get them. Some of them could not find the things. And I believe, I can't remember but one, but one family told me that they were allowed to go to one or two particular places, and they thought the things might be on the other parts, but they weren't things that they've got to have right now. But there are still some things missing. And,

of course, we are dealing with children, the children may have left them in different places of not.

Some parents were not allowed to go to the places on the campus they could look or search in other places besides what they were directed to go look at. But my thinking, the majority of them were satisfied they got most of their stuff.

THE COURT: Is there any objection as to maintaining the status quo as to any personality located on the realty that neither Ms. Alexander nor the Foundation claim is their property.

MS. COOK-LOVE: There is none left.

THE COURT: But, if there is none left –

MR. STRICTLAND: Your Honor, I don't have any objection, if there is some left, it would be helpful if they would provide a list of what is still claimed to be left.

THE COURT: Right.

MR. STRICKLAND: So that we could attempt to locate it.

THE COURT: I agree.

MR. STRICKLAND: My understanding was that there wasn't anything left, according to the person who made, gave the parents access, that there wasn't anything left to be gotten. But as far as, if he will give us a list and if there is something that even closely corresponds with it, we wouldn't dispose of that.

THE COURT: Well, in essence, I'm saying that it is your position, and this is a fairly large campus, and there are a lot of rooms, there are a lot closets, you know, there are a lot of beds to look under, no telling, but for purposes of this hearing, there is no reason not to restrain you from disposing of property that you are not claiming is yours anyway, and you are not even claiming it is not even there. I mean, you are not saying that you have it, but you are saying, hey, if it is there, we are not going to do anything with it.

MR. STRICKLAND: That's correct, Your Honor.

THE COURT: All right. So there is no problem with that, but I would think that it would be incumbent upon the plaintiffs

to get specific as to what they claim is some property that should be on that property that they haven't been able to locate as of yet, but I want to clarify that.

So, in essence, what we are down to, basically, is the real property, which is presently without a signed order still under this injunction and restraining order not to be sold except under the contract that is in existence and according to the terms of the contract, and that is really what you are still arguing about is the real property, whether to lift the injunction on it and just allow it to go, and the money go wherever, whoever is entitled to the money on the defense and claims. Is that right?

MR. STRICKLAND: Your Honor, there is still the personalty of Ebon and Ms. Alexander represented in the fixtures, the computers, things like that that are in the buildings that could be sold to generate cash for the Foundation to pay legal costs.

THE COURT: The contract, I think, covers some of that.

MR. STRICKLAND: I haven't seen it. I have just come in, Your Honor, and I haven't seen it, so –

THE COURT: They have the contract, and they can show it to you.

MS. COOK-LOVE: Your Honor, there are two sets of personal property we are talking about. We are talking about the personal property Dr. Alexander owns and the personal property that Ebon Foundation – he is talking about Ebon Foundation's property. We are not talking about Dr. Alexander's property. So, but the way the, you know, the injunction is written and the way their proposal is written, it covers any real property, any personal property that is on the, it covers both categories, Your Honor.

THE COURT: I agree. It covers it all. I agree with you on it.

MR. BRIDGES: Your Honor, we really can't tell who belongs to what until we get our discovery done and get tax returns and things like that.

Let me ask the Court to include one further bank account that has been testified to. That is the Monroe County Bank. And I believe the account number is 0204867. That was the account that these funds were transferred into.

I don't know if there is anything in it or not, but I think that probably, whatever is there needs to stay there.

THE COURT: All right. Okay. So, let me make sure I've got clarification. Do you want to go out, Mr. Strickland, and talk to your client?

MR. STRICKLAND: Yes, sir. I will ask him about the $1,700.00.

THE COURT: Go right ahead, and I will be making some notes here and we will come back in just a second.

(BRIEF DELAY)

MR. STRICKLAND: They are holding funds in three Atlanta bank accounts that are still left, and the Capital City accounts.

THE COURT: Okay. But there is also, they are claiming an Ebon Foundation account at Monroe County Bank?

MR. STRICKLAND: Your Honor, there has been no testimony about what is in that account and what the balance is that account. I have no idea how much is there.

We have had no testimony from the Monroe County Bank that there has been any appearance of impropriety in any of those accounts, so it is hard for anybody to know what is in there and what has been done. I don't have that, those account records in front of me, so I couldn't tell the Court what the balance is in the account.

THE COURT: Well, I'm sure that if I restrain, continue the restraining order or expand it to include that account, that the bank records will show what it was, and any transfers after –

MR. STRICKLAND: Yes, sir.

THE COURT: – 5:00 o'clock would be improper. They probably wouldn't transfer after 5:00 anyway, they are closed, so it would be effective as of notification to them. They could transfer it without notice, and then we would have to deal with

wherever it went, and we would deal with whether whoever initiated that transfer is in violation of the Court order.

The question was whether you wanted to address that with your client or not, or do you just want to let me make the decision on it?

MR. STRICKLAND: Your Honor, the difficulty is the Foundation has limited assets at this point. And this litigation is probably going to burn up in a very quick hurry any cash money that they have to pay bills or to pay legal fees or do anything. The Foundation will probably be destitute in a few months, if we don't have access to either sell this personalty and generate some money to pay bills and continue to fight this litigation or have access to our accounts that are there. I mean, we have identified how much money is there, but we are quickly going to be at a point that I am probably going to be working gratis, Your Honor, if there is not any money to pay.

THE COURT: I suspect by the end of this day you are going to have exceeded the amount we have evidence of.

MR. STRICKLAND: And so it is going to hamstring Ebon – if you restrain the personality on the campus and you restrain the accounts, it is going to hamstring Ebon to defend this lawsuit.

THE COURT: Well, but I also would be remiss in my duties if I didn't restrain it until you can show how much money is in that account and why you are entitled to use some of it. I mean, if there is only a dollar in there, we are arguing about nothing. If there is a hundred thousand in there and you want to take all of that out, then we are arguing about something that you might not need all of it. So the err on the safety side is to restrain any disposal of those funds by your client, restrain any disposal of the personal assets that belong to Ebon until we know what they are.

MR. STRICKLAND: Okay.

THE COURT: We don't have any evidence whatsover as to what those personal assets of Ebon Foundation are.

MR. STRICKLAND: You are correct, Your Honor, and I – if I can come forward and show the financial condition of Ebon to the Court –

THE COURT: Certainly.

MR. STRICKLAND: – and show you how much is in this Monroe County account and show the need to access this money to continue to defend this lawsuit, is it possible to lift that injunction?

THE COURT: It is always possible.

MR. STRICKLAND: Okay.

THE COURT: It is always possible to move to file a motion at any time to dissolve the injunction, a change of circumstances, the status quo is not the same as it used to be, even though we may have an injunction trying to maintain it.

You know, it will be hard – well, we will just have to play it by ear and see how it goes, but it is my position today that the injunction or the temporary restraining order is going to be continued in its present condition with the expansion of, we will include the Capital City Bank accounts, arts fund raising, escrow student account, and PTA Booster Club, and the Monroe County Bank account, 0204867, which I believe is in the name of Ebon Foundation.

And as to any cash belonging to Ebon Foundation that we don't know about, I don't think there is any, but I would be remiss again if there is some out there that we did not restrain that from being disposed of by the defendant, Ebon Foundation.

Now this does not include, for clarification purposes, any account that is Dr. Alexander's personal account. There is no application for anything of that nature. There is no evidence of anything that she has any accounts that she has secreted any funds into. There is evidence that some money has gone from, quote, an escrow account into an operating account. Where the funds went from there, we don't know. But if they are still there, we hold them. If they've gone from there, and they went into somebody's pocket, then you may have to expand the

injunction to include personal accounts. But I don't think at this time there is any evidence of that, that we need to do that.

MR. STRICKLAND: Your Honor, are you attempting with this, or to reach into any accounts that belong to Ebon, Ebon in Florida?

THE COURT: I don't know that I have any authority to do that. There is no – at this –

MR. STRICKLAND: Are you trying to – I recently received a retainer on behalf of Ebon Foundation and deposited into my trust account in my law firm. Is this order reaching that money?

THE COURT: Well, I don't even know. All I know is there are three accounts we know of, and a fourth in Monroe County, an operating account. Okay? We have no idea what is in that.

The accounts and/or accounts that you may have, or your client may have in Florida, I have no knowledge of. I don't think I can just do a blanket restraining order. As the discovery goes we may find that there is a reason to do that.

But, I mean, you are saying your client is destitute. Now we have found out there is an account in Florida I don't know about. It might have anything in it. It may be like some of my accounts. I've got several. But the more you have, it doesn't mean the more money you have. You can have a little in a bunch. But right now, no.

The money you have received, thank goodness, I used to practice law, you can keep in your escrow account. I'm sure it is there for purposes that you can trace the funds paid into you as for fees, and anything that is not used up would eventually go back to your client. But, no, I'm not going to restrain you from using that for utilization of defense purposes, no.

Now, other than what I've just done, and of course, the order I will execute tomorrow, Mr. Vaughn has the copy of the contract and he has the copy of the appraisal. He has not unsealed it because he did not – he called me, and I told him not to. He didn't want to until he has an order in hand. And he has not done so. I have that in my car. And if anybody wants

a copy of it tomorrow, they can make a copy of it. It simply is what I told you, that the attorneys can look at the contract in Mr. Vaughn's office and the appraisal. They are not allowed to make copies, nor are you allowed to disclose the exact contents of the order, I mean, the contract and the appraisal. You can simply – I'm not including what you can do, I'm saying what you can't do.

Now, in that regard, I will tell you that, of course, your client is going to want to know, don't go into the particulars, you simply make a summation. You will like it or not like it. And then if you don't like it, you can file a motion with the Court for modification. But that will be available tomorrow.

Mr. Vaughn said he will work with anybody. Make a call, set up a time to come in. He will be in court a little bit tomorrow. You can do it at his convenience, which is fairly open, is my understanding.

Is there anything else we need to take up today?

MR. WANGERIN: Your Honor?

THE COURT: Yes.

MR. WANGERIN: We still have the issue of the injunction as to the real property because there has been – no evidence has been put up in this hearing that would effect the real property or would justify the Court keeping the temporary restraining order as to the real property. And you know, we certainly want to put up evidence to show that that real property was purchased by Dr. Alexander personally, that it is in her name personally, that the County has recognized she owns the property, that the Attorney General's office has recognized that she owns the property, and we want to get that property released both as to – we actually have two pieces of property here. We have the college campus property, and then we have the other, 98 acres, which is across the Interstate that Dr. Alexander owns. And there has been no evidence put up here today that any of that property is involved in this, that there has been any type of impropriety in the purchasing of that property, and we certainly want to be able to have the temporary

restraining order lifted as to that real property so that she has the ability to sell that real property.

THE COURT: All right, Mr. Bridges.

MR. BRIDGES: Your Honor, that is a five and a half million dollar piece of property that is going to sell for $18,000,000.00. And, certainly – I don't know what the amount of it is, but any improvements that have been done on it, in all likelihood, have come through that Ebon operating account. At this juncture, we don't have to prove our whole case. We have to just show that there is enough, to the Court, that if it doesn't pass the initial smell test, to give us a chance to get in to do the discovery. I feel certain that once we get into the discovery, we are going to see a lot of money going from that Ebon Foundation account to pay for repairs on that property, which enhanced the value of the property, and so there, right there, that goes to the real estate, and so that is where it starts melting together.

Secondly, there are – we have not, certainly not abandoned our position that she holds equitable title to it. There is a document that is a letter from Dr. Alexander to the Monroe County Development Authority asking for a ten million dollar bond. They have acknowledged the letter is accurate. It is filed as an exhibit to the plaintiff's complaint. And in that she says, she makes reference to a five and a quarter million dollar bridge loan to the school.

The only substance that that could be would be the land itself, the purpose of it, that she was holding that property in trust for the school.

There are also some matters with the tax exempt application where it is real muddled there.

There is also the matter of the lease. There are just a number of items there, the way that it is exposed, the Foundation, and the way that apparently repairs have been done, things that have gone on to the property has muddled it to the point where there is not a bright line. And there is suggestion that, you know, there is still this other property sitting out there that is still

attached. No, that is an undeveloped piece of dirt. This property, this real estate here is what holds the vast majority of the value here. And we would urge you to continue – and of course, I guess we could get some clarification that the proceeds of that be held by the receiver, along with all the proceeds and things from Ebon.

THE COURT: Well, you know, Mr. Wangerin, my – I guess, if you would let me respond first, and then if you want to, you can.

Again, we are dealing with a situation that in my book, from what is already in the record, which I'm entitled to consider on the injunction issue, not just what was put up today, that the transfers of funds that have occurred from arts, fund raising, escrow student account, PTA Booster, primarily escrow student account, being classified as an escrow account gives it some sort of special, I guess, designation in my mind, into an operating account from which, in all likelihood, the bills have been paid until the account has been exhausted, it is down to $66.39, according to my notes, is evidence that funds have been transferred from a protected escrow account to a non protected account by actions of Ms. Alexander.

Now, to say, well, there is no evidence that anything has ever been done with the real estate. Well, you know, that is – and I'm not saying this, Ms. Alexander or your attorney shouldn't take this wrongly, but, you know, if someone steals your hubcaps, that doesn't meant they won't steal your gas, too. Okay? And you don't have to prove that they have stolen everything that you are asking to be protected. In essence, I'm saying there is evidence that there are funds that have been moved. If it comes later that those funds were never moved, they are still sitting in that account, they never were utilized, a different ball game. But as of right now, I think Mr. Bridges is right, it has passed the smell test, in essence, what we are doing. And the idea of the injunction is to maintain the status quo of the parties. That is what I'm going to do.

Now, if y'all want to present evidence, you are going to have to probably do it tomorrow in Monroe County because I'm running out of time today to basically allow this hearing to continue. We can continue it until tomorrow. I have court hearings up there tomorrow, but we can do it whenever we have time. We will go into Saturday, if you want to. I am not doing a dang thing on Memorial Day. I will be glad to have y'all on Memorial Day. If y'all are willing to work, I'm willing to do it. Couldn't find any place where there wasn't going to be crowds, so I decided not to go anywhere. This will be the crowd. We will do it Memorial Day. I don't care. I have as much time as y'all want to take.

But my understanding of an injunction in this type situation is to maintain the status quo so that all the parties are protected. I have attempted, and I have, or will have tomorrow modified the restraining order and injunction to allow, and the lis pendens, to allow the sale of the main campus under the existing contract.

I'm not barring anybody from asking for a modification of that order in the event the contract needs to be amended because I understand it has already expired. If there are some negotiations going on, all you've got to do is file the motion, ask for a modification.

No one, I can't think of anybody that wouldn't want a hard asset converted into a cash asset. I just cannot imagine when we are dealing with claims like this, the plaintiffs would probably love it because it would – and the intervenors, it would give them something that in the event they prevail on their claim, it is much easier to manage, much easier to keep track of and convert to what they need to use it for.

MR. WANGERIN: Your Honor, I think that we probably do need to request the opportunity to put evidence on the record, basically, for two reasons. One is the value that we are talking about with the campus and stuff, I mean, even if you kept the campus under the injunction, I think that the cash it would generate is more than enough to cover anything that is involved

in this lawsuit, which means, you know, at least the other 98 acres should be removed out because it is not involved in this lawsuit in any way, it is not involved with Ebon Academy in any way. There has never been any question about that, so we would think that property should come out.

The second issue I think we need to present evidence on is we have the issue of security in terms of maintaining this temporary restraining order. I think the Court is correct, it is to maintain the status quo in the bounds of the convenience of the parties as to the risk that is going to come to the plaintiffs if we go ahead and sell the property, and the risk it is going to have to Dr. Alexander if we keep this temporary restraining order in place.

We need to be able to put up the evidence to show that, you know, I think it is every 90 days she is having to pay like another $30,000.00 for insurance on this property, and we need to be able to put that up because we think it is only going to fair, if you continue this temporary restraining order in place, that the plaintiffs put up, or the State put up some security on their side of it in case when we prevail in this case, when we come to court and say, you know, look, the delay of the sale of this property has either cost us, you know, the original contract we had, or we've had to spend an additional hundred or two hundred thousand dollars to maintain the property while this suit is going on. They should have to put up a bond or some security in order to have that available to us. And so we would want to be able to put up issues, or evidence on those issues.

THE COURT: Well, now, she is not restraining from marketing the property. She can seek any buyer she can find out there. She is not restrained from marketing it. She just can't sell it, actually close it. All she has to do is put a contract stipulation in there, "Subject to approval of the Monroe County, Superior Court" on this contract.

MR. WANGERIN: I understand that, Your Honor. It makes it difficult, though, when you have the lis pendens out there and when you have court orders out there.

We are certainly going to keep marketing the property and do what we can to sell the property. But we think, you know, just the mere fact of having to get the court approval makes it difficult for some buyers.

THE COURT: Well, I will give you a blanket approval at this time if you can get a contract just like the one submitted to this Court, I don't care who the buyer is, it is approved. I can guarantee that right now.

MS. COOK-LOVE: Your Honor, we would like the opportunity to tomorrow, because you indicated at this particular point in time that you had, they made some doubt in your mind that there is some way they are going to prevail in some escrow account of $50,000.00. We would request an opportunity to respond to that first.

Secondly, we also would like you to look at specifically how much money they are talking about that they have any evidence of damages to. You are talking about a fifty thousand dollar students' escrow account versus an eighteen million dollar property. Why are you putting such a strict amount on that instead of allowing us to put the $50,000.00 into the escrow account? It doesn't quite seem fair in this particular case, and we would ask for an opportunity to address those issues.

THE COURT: Well, I'm not saying, also, if you get the property sold and converted the cash that I wouldn't modify the order and allow some of that paid out of the registry of the court. Until that time, though, it is premature. But you are not foreclosed from asking for that.

This case isn't going to be over with in the next 30 days, I'm afraid. Y'all are going to be living with me, and I'm going to be living with y'all for another couple of months, at least several.

And if there are modifications that need to be made to preserve this case in a fashion that everybody can move along and get it resolved, either through trial or through hearing, that's fine. And if it is unfair, if there is $18,000,000.00 sitting

in a bank account and it is unfair to keep that much, as you can prove it, hey, I don't have a problem modifying it.

You know, there is no sense holding someone up, in essence, to $18,000,000.00 when the total of claims is only a million, at best. I mean, I agree totally. But we haven't reached that point.

MR. SULLIVAN: Your Honor, I believe the whole purpose is not just the $50,000.00. We are talking about the derivative suit. The State's interest is that the real property belongs to Ebon Foundation, so that is why that they have taken that position, that it is not a balance of just a few dollars versus $18,000,000.00, that this property was purchased and Ebon has an equitable interest and it is almost like a trust, basically, is what their argument is.

THE COURT: I understand. But I don't, I don't know much about Ebon, other than what I've heard here. But I think you are going, my guess is you are not going to find that at any time Ebon ever put money into the real estate, you are going to find that Ms. Alexander put money into Ebon.

Now, that is my guess, but we will find out through discovery if that is what took place or not.

But, in essence, what we will do is we will reconvene this at 9:00 o'clock in the morning in Monroe County. I've got a regular hearing day at 9:30. And actually, when y'all get there, if y'all will go ahead and set up because y'all take priority, under the law, over all of the other stuff. Maybe they will all settle their cases when they see all of y'all sitting there. And I will just have to deal with this case tomorrow.

But I'm going to give them the opportunity. I think they ought to have the opportunity to put up the evidence. I'm just running out of time tonight. I've had a very long day, and I think they deserve more attention that I'm about to be able to give...."

APPENDIX E

IN THE SUPERIOR COURT OF MONROE COUNTY
STATE OF GEORGIA

TYRE E. CHAPMAN, et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a	:	FILE NO.:
EBON INTERNATIONAL	:	97-CV-150
PREPARATORY ACADEMY,	:	
a foreign corporation, and	:	
FLORENCE HICKS ALEXANDER	:	
as Director of Ebon Foundation, Inc.	:	
And Individually,	:	
Defendants,	:	
v.	:	
JOYCE OATMAN, as Director of	:	
Ebon Foundation, Inc.,	:	
Intervenor.	:	

ORDER

The above styled matter having come before the Court on April 30th, 1997 for hearing on Defendant's Motion to Set Aside and/or Modify the Temporary Restraining Order issued by the Court on April 24th, 1997, and the Court having heard evidence thereon, the Court does hereby rule as follows:

1.

The Temporary Restraining Order dated April 24th, 1997 is hereby amended by adding thereto: "Time of Execution 3:20 p.m."

2.

The property described on Exhibit "A", attached hereto and by reference incorporated herein (hereafter referred toas "the 44 acre tract"), is hereby released from the operation and effect

of the Temporary Restraining Order issued by this Court on April 24th, 1997, subject to the terms and conditions of this order being complied with by the Defendants.

3.

"The 44 acre tract" is hereby released from the operation and effect of the Lis Pendens filed in this case on April 24th, 1997, pursuant to O.C.G.A. 44-14-610, et. seq., subject to the terms and conditions of this order being complied with by the Defendants.

4.

The Court does hereby authorize "the 44 acre tract" to be sold to General Missionary Baptist Convention of Georgia, Inc. by the Defendant, Florence Hicks Alexander, pursuant to the contract of sale dated March 4th, 1997 and according to the terms thereof. The proceeds of the sale (gross sales price minus the seller's expenses of sale) shall be paid to the receiver appointed pursuant to this order. Upon receipt of the proceeds of sale by the receiver, he shall tender said proceeds to the Clerk of Superior Court of Monroe Count[y] to be paid into the registry of the court. The clerk, upon receipt of the funds, shall deposit same with one or more federally insured financial institutions doing business in the State of Georgia, in an interest bearing account. The interest accruing shall be retained in the registry of the court but, shall accrue to the benefit of the parties in accordance with their interest.

5.

The Court does hereby appoint Attorney James A. Vaughn as Receiver to supervise the closing of the sales contract and to ensure the sale of the property takes place in compliance with the terms and conditions of the sales contract. The sales contract and appraisal are hereby sealed by the Court. The Receiver shall allow the Plaintiff's and Intervenor's attorneys an opportunity to review the sales contract and appraisal, but shall not allow any copies of either to be made. Neither the Receiver nor any attorneys shall reveal the contents of the sales contract or appraisal.

6.

The closing attorney chosen to handle the closing of the contract of sale shall 24 hours in advance of closing, provide the Receiver a copy of all closing documents related to the sale of the property. The Receiver shall be in attendance at closing and shall, if closing documents comport to the terms of the sales contract, issue to the closing attorney a letter indicating said compliance.

7.

Any party may apply to the Court for modification of this Order upon good grounds shown to the Court.

SO ORDERED this 23rd day of May, 1997, nun pro tunc to April 30th, 1997

/s/ Arch W. McGarity
Arch W. McGarity
Superior Court Judge
Flint Judicial Circuit

EXHIBIT "A" TO ORDER DATED MAY 23rd, 1997
ENTERED IN CIVIL ACTION FILE NO. 97-CV-150,
SUPERIOR COURT OF MONROE COUNTY, GEORGIA

All that tract or parcel of land lying and being in Monroe County, Georgia, in the City of Forsyth, containing 44 acres, more or less, and being more particularly described as follows:

BEGIN at the point on the northerly right-of-way line of Tift College Drive marking the point of intersection of said right-of-way line with the westerly property line of the 17.252 acre tract of land designated as Tract "B" on the plat of property survey prepared for Ingles Markets, Inc. and Old Republic National Title Insurance Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar, and from said point of beginning run in a westerly direction along the northerly right-of-way line of Tift college Drive with the northeasterly right-of-way line of Railroad Avenue; run thence in a northwesterly direction along the northeasterly right-of-way line of Railroad Avenue a distance of 660 feet, more or less, to the southeasterly right-of-way line of College Street; run thence in a northeasterly direction along the southeasterly line of College Street a distance of 665 feet, more or less, to the point where said right-of-way line bends to the left and extends in a northwesterly direction; run thence in a northeasterly direction along the easterly right-of-way line of College Street a distance of 392.5 feet to the southern property line of property new or formerly owned by Julian J. and Minnie Wright a distance of 473.2 feet to the southeasterly corner of said property now or formerly owned by Julian J. and Minnie Wright; run thence in a northerly direction along the easterly property line of said property 212.6 feet, more or less, to the southwesterly right-of-way line of East Drive a distance of 1,200 feet, more or less, to the westerly property line of Tract "B" shown on plat hereinabove referred to prepared for Ingles Markets, Inc. and

Old Republic National Title Insurance Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar; run thence South 03 degrees 31 minutes 10 seconds west along the westerly right-of-way line of said Tract "B" a distance of 894.51 feet to the 5/8ths inch rebar herinabove first referred to located on the northerly right-of-way line of Tift College Drive, which is back to the point of beginning.

ALSO that certain triangular tract of land located in Monroe County, Georgia, and in the city of Forsyth, being bounded as follows: On the southeast by the northwesterly right-of-way line of College Street; on the west by the easterly right-of-way line of James Street; on the north by the sourtherly right-of-way line of Tribble Street.

APPENDIX F

IN THE SUPERIOR COURT OF MONROE COUNTY
STATE OF GEORGIA

TYRE E. CHAPMAN, et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a	:	FILE NO.:
EBON INTERNATIONAL	:	97-CV-150
PREPARATORY ACADEMY,	:	
a foreign corporation, and	:	
FLORENCE HICKS ALEXANDER	:	
as Director of Ebon Foundation, Inc.	:	
And Individually,	:	
Defendants,	:	
v.	:	
JOYCE OATMAN, as Director of	:	
Ebon Foundation, Inc.,	:	
Intervenor.	:	

TRANSCRIPT OF PROCEEDINGS HEARD
ON APRIL 30, 1997, BEFORE
HONORABLE ARCH MCGARITY, JUDGE,
FLINT JUDICIAL CIRCUIT, PRESIDING
IN MONROE SUPERIOR COURT.

COURT'S OPINION -- PAGES 70-74, 82-87, 89-91

"...THE COURT: All right. Well, I think that regardless of what one puts in your bylaws, it has to be in compliance with the Nonprofit Corporation Code, whether it be this state or the District of Columbia. And I don't think it is in compliance with the Nonprofit Corporation Code in the District of Columbia when the articles of incorporation and the bylaws conflict.

From the reading of both of those, there could be simultaneous firing of every member. The Board can fire the chairman, the chairman can fire all the members of the Board so that simultaneously we could have a nonexisting entity, just by all sitting down at the table and saying, well, we don't like you anymore. You are fired. Or I don't like y'all. I'm getting rid of y'all.

And all of them could execute whatever they wanted to, and it would cease to exist because there are no members that I have seen in this corporation. I don't think that sufficient evidence has been shown to this Court for me to find that Ms. Oatman has been terminated, especially when you take into consideration the Fed Ex letter and the phone conversation, which is [u]ncontradicted, that took place, that if she had fired her she wouldn't need her to resign.

And so, basically, I think she is still on the Board as far as I can tell, and until we have further information, records of the corporation, and I get a chance to look at the D.C. Code, which I have not reviewed in a number of years, and will do so between now and the next hearing.

But at the present time, I think that she is going to stay in the case, that she does have standing to maintain her position presently. I will recognize on the record that I think that she may have to amend her pleadings, but that is a very simple thing to do.

And she is going to have to go on one side of the case or the other. She can't straddle the fence and play both sides. But at this point I am going to allow her to remain in the case.

MR. WANGERIN: Your Honor, by that ruling are you saying that since you still have to look at the Code and stuff that that may be an issue which we can address again at the May 22nd hearing.

THE COURT: I am really stretching it to remember exactly what the D.C. Code says, but I believe they adopted the model nonprofit corporation code. If am not mistaken there are certain requirements, and one of those is that you have a

minimum number of directors to operate. And I do not believe that the chairman, selected by that board, can fire the entire board at will without cause of a nonprofit corporation. I don't think that is correct, which is what these bylaws indicate she can do.

I will have to take a look at that. But at this point I think it is a waste of our time because even if I take Ms. Oatman out at this point, we still have the Secretary of State and the Attorney General in under our Codes. But at this point, she is going to stay in.

We will take a ten minute break and come back, and we'll deal with the injunction issue.

[RECESS TAKEN].

THE COURT: Let's come to order.

THE COURT: Let me go ahead and put this on the record right now as to where we are. We have reached a major milestone in any litigation in which there are 14 lawyers involved. We have almost reached a consensus.

Ladies and gentlemen, what we are going to do at this point is the Court is going to do an in camera inspection in chambers of the contract that is involved in this injunction for the sale of the 44, I believe, 43 acres, formerly Tift College, now Ebon Academy. After the Court has reviewed the contract, unless something unusual appears in there that heightens my attention or causes me to be concerned about the sale, the Court will seal a copy of the contract, not the original, and a copy of the appraisal which is on its way, and will make that available for the attorneys to review representing all the parties.

The purpose of that is so that they can determine for themselves on behalf of their clients that they feel like this is a fair contract and that their client's interest are not being jeopardized by completion of the sale. However, they are not allowed to disclose the terms of that contract, so the sales price and anything else that they may find out about would not be disclosed. They will simply be reporting to their clients that it is in their best interest that the sale go forward or, if not, they

could, of course, take whatever action they feel is appropriate, filing a motion with the Court, or whatever.

But at this point the sale will possibly go through, depending on a number of items, depending on a number of items: First, my review of the contract; secondly, whether I change my mind as the result of any motion filed [by] any party in the case.

The Court will be appointing a receiver, is what I am going to call this individual, the purpose of which the receiver will insure that the closing does in fact take place in compliance with the terms of the contract, that the contract is closed on appropriately under laws of this state, and that all documents are properly executed and will receive the funds that are received from the sale, and those funds will be paid into the registry of this court,...

....THE COURT: Okay, let us review, if not for the sake of the people here, for my own sake because I make notes as I go along where we are. I will state at this point, as I go along on any particular issue, if you think I have forgotten something or need clarification on it, be sure to speak up. That is the time to deal with it.

First, is the appointment. I will appoint a receiver, Mr. Vaughn, whose duties will be, as I have previously stated, to carry out the terms of the contract on behalf of the Court, or to see that they are carried out by whoever the closing attorney is. I will not require the closing attorney to be insured for 18 million. There is, my understanding, a title insurance policy being written on the property. At least, there was a company's name and phone number and an individual to contact on the back of the contract. So I assume the buyer is buying coverage for themselves. We'll deal with that.

Mr. Vaughn's duties will be to be available after he has picked up the contract and the appraisal for each of you to review the contract and the appraisal in his office. He is not to release the contract or the appraisal to any of the attorneys. It is to stay in his office, and you are not to have copies of it, but you are entitled to read it.

He is to be sure that the closing is carried out in accordance with the terms of the contract as it relates to the seller's interest. He will be provided, 48 hours in advance of closing, copies of all closing documents and will review to be sure that they are in compliance with the contract and the seller's duties.

Principally, having reviewed the contract, that is going to be the HUD One, if they us a HUD One closing statement. They may not use a HUD One, but whatever closing statement is really going to be the key, to be sure that the seller is paying only what seller is obligated to pay under the contract.

Mr. Vaughn will also receive the proceeds of the sale, which will be paid into the registry of the court, and those funds will be deposited with an entity that is insured, either through the federal government, or has federal securities to back the deposit. We will just have to either bid it, it may take us a couple of days, but I sit on a bank board. I will find out through the president of our bank what banks can do and can't do. My bank will not be involved in this, but I can find out exactly what they can and can't do.

This the money will be protected. It is the duty of the Court to protect those funds. They are public funds, in essence, while they are in the registry of the Court, I guess. That is the way I am going to deem it since it is a nonprofit corporation that is involved somewhat.

That should take care of Mr. Vaughn...

Does anybody have question about Mr. Vaughn's duties?

MR. SULLIVAN: I think we also talked about the receiver taking custody of the recordable instruments, the deeds and the money, all at the same time.

THE COURT: No. He is going to be sure that the closing goes down in accordance with the terms of the contract and we get the funds to go into the registry of the court. Once the funds are paid, in certified funds, and delivery of the deed is made, the seller is out of the picture, and that is as far as we go. That is the closing attorney's obligation at that point. If it never gets recorded, if we've got the money, I don't care.

MR. SULLIVAN: The concern was that the delivery of the deed take place at the same time or after the receiver receives the funds, the timing?

THE COURT: He is going to be at closing.

MR. SULLIVAN: He is going to attend the closing?

THE COURT: He is going to attend the closing. We are not going to go by the mail. He is going to attend the closing.

MR. SULLIVAN: One other point was will we have, I think we discussed, have an opportunity when Mr. Vaughn receives the closing documents to go to his office and review those, also?

THE COURT: You will have that opportunity. I don't know that I have stated this, but the attorneys will not disclose the contents of the appraisal or the contract of sale. None of the attorneys who review it will be disclosing that.

MS. COOK-LOVE: Do they have to sign an affidavit?

THE COURT: That is what I previously stated. I think I will stick with that. I want an affidavit from each of you. I guess we will have to prepare the form, that you will provide the Court – I'll just prepare those myself, and each of you can sign after we have reached the closing, after closing has occurred, that you have not disclosed any and you will not in the future disclose it.

MR. WANGERIN: That applies to all documents which will be in the receiver's possession?

THE COURT: That are not required to be recorded and made a public record.

MS. COOK-LOVE: After everything is completed, will the receiver continue to hold the documents, or will they return it to the Court?

THE COURT: They will be sealed, again, just like the contract and the appraisal. Once his duties are over with, there's no need for him to keep the documents at that point, once he has delivered the funds to the Court. Then the documents he receives at closing, as the Court's copies of these

documents, plus the contract and the appraisals we have will all be sealed and will be a part of the court record.

And it will only be opened upon someone else ordering that they be opened, or myself ordering that they be opened, court order. I think we are not required nowadays to send all that stuff to the Supreme Court.

Let me just make sure I get through all my notes on this.

All right, that should cover Mr. Vaughn....

...THE COURT: All right. If no one has an objection, he will be If no one has an objection he will be appointed, then. Thank you. Now, the lis pendens that has been filed on the property as part of the court order, I may do a separate order instead of making it a part of it so it will be something that you won't have to read a the four or five page order to find what you are looking for. The campus acreage, the 44 acres I am going to refer to it, will be released from that lis pendens by court order. The lis pendens will remain in effect on any property not covered by the contract, and that contract does only cover the 44acres.

As far as the Court order that I am preparing, Mr. Melton is going to be preparing one on behalf of his folks to allow the intervention. There is no need for Ms. Oatman's because she is already in. In essence, I just simply denied the motion. I may very well – well, it's going to covered in the modification order because we are just modifying the restraining order, in essence.

The only thing I wanted to point out is that the restraining order itself does not have the time of execution on it which it is required by law to have. Luckily, I was pushing these folks out of my office the day they were there because I had to pick up my stepson at school, and I got there at 3:30 and it's ten minute from my office. So I signed it at 3:20 p.m., and that is what I am going to affix on that signature as the time I that signed it. It should have already been on there. But I wanted y'all to know I'm going to modify it, in essence, by adding the time of execution. They left right before I did. And that was

when I got out of there and got down to the school. So I wanted to make y'all were aware that I was going to do that. If you want a copy with the time on it, you can get one from the Clerk's office later..."

APPENDIX G

IN THE SUPERIOR COURT OF MONROE COUNTY
STATE OF GEORGIA

TYRE E. CHAPMAN, et al., Plaintiffs,	:	
v.	:	CIVIL ACTION
EBON FOUNDATION, INC. d/b/a EBON INTERNATIONAL PREPARATORY ACADEMY, a foreign corporation, and FLORENCE HICKS ALEXANDER as Director of Ebon Foundation, Inc. And Individually, Defendants,	:	FILE NO.: 97-CV-150
v.	:	
JOYCE OATMAN, as Director of Ebon Foundation, Inc., Intervenor.	:	

RULE NISI AND TEMPORARY RESTRAINING ORDER

The above and foregoing verified Complaint of the Intervener, Joyce Oatman, as Director of Ebon Foundation, Inc., having been read and considered, and the same having prayed for a temporary restraining order to be issued without notice to the Defendants, and having alleged that immediate and irreparable injury will result if such restraining order is not issued, and the attorney for Intervenor having certified as to his efforts to give such notice and as to reasons why such notice should not be required, and it appearing to the Court that a proper case has been made out for a temporary restraining order, IT IS HEREBY ORDERED AND ADJUDGED:

(a) That the Defendants EBON FOUNDATION, INC., and FLORENCE HICKS ALEXANDER are enjoined and restrained from the sale or conveyance of the real property described hereinbelow, personalty on said property (including but not limited to fixtures, furnishings, computer equipment, audio visual equipment, books, buses and vehicles, and all other matters of personalty belonging to or found upon the real property described hereinbelow) until such further order of the Court, said property being more particularly described as follows:

"MAIN CAMPUS TRACT:

All that tract or parcel of land lying and being in Monroe County, Georgia, in the City of Forsyth, containing 44 acres, more or less, and being more particularly described as follows: BEGIN at the point on the northerly right-of-way line of Tift College Drive marking the point of intersection of said right-of-way line with the westerly property line of the 17.252 acre tract of land designated as Tract "B" on the plat of property survey prepared for Ingles Markets, Inc. and Old Republic National Title Insurance Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar, and from said point of beginning run in a westerly direction along the northerly right-of-way line of Tift college Drive with the northeasterly right-of-way line of Railroad Avenue; run thence in a northwesterly direction along the northeasterly right-of-way line of Railroad Avenue a distance of 660 feet, more or less, to the southeasterly right-of-way line of College Street; run thence in a northeasterly direction along the southeasterly line of College Street a distance of 665 feet, more or less, to the point where said right-of-way line bends to the left and extends in a northwesterly direction; run thence in a northeasterly direction along the easterly right-of-way line of College Street a distance of 392.5 feet to the southern property line of property new or

formerly owned by Julian J. and Minnie Wright a distance of 473.2 feet to the southeasterly corner of said property now or formerly owned by Julian J. and Minnie Wright; run thence in a northerly direction along the easterly property line of said property 212.6 feet, more or less, to the southwesterly right-of-way line of East Drive a distance of 1,200 feet, more or less, to the westerly property line of Tract "B" shown on plat hereinabove referred to prepared for Ingles Markets, Inc. and Old Republic National Title Insurance Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar; run thence South 03 degrees 31 minutes 10 seconds west along the westerly right-of-way line of said Tract "B" a distance of 894.51 feet to the 5/8ths inch rebar herinabove first referred to located on the northerly right-of-way line of Tift College Drive, which is back to the point of beginning.

ALSO that certain triangular tract of land located in Monroe County, Georgia, and in the city of Forsyth, being bounded as follows: On the southeast by the northwesterly right-of-way line of College Street; on the west by the easterly right-of-way line of James Street; on the north by the sourtherly right-of-way line of Tribble Street.

NORTHEASTERLY ACREAGE TRACT:

All that tract or parcel of land lying and being in Land Lots 183, 184, 201 and 202 of the 6th Land District of Monroe County, Georgia, containing 98.90 acres according to a plat of a boundary survey prepared for the Corporation of Mercer University by Hugh W. Mercer, Jr., Georgia Registered Land Surveyor No. 1890, dated October 31, 1991, a copy of which is recorded in the Clerk's Office of Monroe Superior Court in Plat Book 18, Page 5, reference to which is hereby made for a more complete and accurate description of the property hereby conveyed.

This is the same identical property described in that certain Limited Warranty Deed dated December 28, 1994, from the Corporation of Mercer University, as Grantor, to Florence Hicks Alexander, Ph.D., as Grantee, and recorded in Deed Book 450, Pages 294-297 in the Office of the Clerk of Superior Court, Monroe County, Georgia. Said deed and the legal description contained therein is by reference incorporated herein and is made a part of this description."

(b) The Defendants EBON FOUNDATION, INC. and FLORENCE HICKS ALEXANDER are so ordered and enjoined for a period of thirty (30) days.

(c) The Defendants EBON FOUNDATION, INC. and FLORENCE HICKS ALEXANDER are hereby ordered to appear and show cause before the appropriate non-jury division of this Court on the 22nd day of May, 1997, at 1:30 o'clock p.m. in the Monroe County Courthouse in Forsyth, Georgia, as to why the demands stated in Intervenor's Complaint should not be granted.

GIVEN UNDER MY HAND AND SEAL, this 24th day of April, 1997.

/s/ Arch W. McGarity

JUDGE, SUPERIOR COURT
MONROE COUNTY, GEORGIA

Respectfully submitted by:

/s/ Jeffrey D. Bridges
JEFFREY D. BRIDGES
Georgia Bar No. 080950
Attorney for Intervenor
Post Office Box 66601

Macon, Georgia 31208-4077
Tel: (912) 743-9517

APPENDIX H

SUPREME COURT OF GEORGIA

Atlanta April 2, 1998

This Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

S97A2027. EBON FOUNDATION, INC., d/b/a EBON INTERNATIONAL PREPARATORY ACADEMY v. JOYCE A. OATMAN, Director, et al.

S97A2028. FLORENCE HICKS ALEXANDER v. TYRE E. CHAPMAN, et al.

S97A2030. FLORENCE HICKS ALEXANDER v. TYRE E. CHAPMAN, et al.

The motions for reconsideration in each of the above-styled cases are hereby dismissed.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk`s Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Illegible, Chief Deputy Clerk

APPENDIX I

SUPREME COURT OF GEORGIA

Atlanta May 1, 1998

This Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

S97A2027. EBON FOUNDATION, INC., d/b/a EBON INTERNATIONAL PREPARATORY ACADEMY v. JOYCE A. OATMAN, Director, et al.

S97A2028. FLORENCE HICKS ALEXANDER v. TYRE E. CHAPMAN, et al.

S97A2030. FLORENCE HICKS ALEXANDER v. TYRE E. CHAPMAN, et al.

It is ordered that the second motion for reconsideration in these cases, received on April 16, 1998, is not allowed filed.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Illegible, Chief Deputy Clerk

APPENDIX J

OFFICIAL CODE OF GEORGIA - ANNOTATED

CIVIL PRACTICE ACT

ARTICLE 8
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

O.C.G.A. 9-11-65 (1995)

9-11-65. Injunctions and restraining orders.

(a) *Interlocutory injunction.*

(1) *Notice.* No interlocutory injunction shall be issued without notice to the adverse party.

(2) *Consolidation of hearing with trial on merits.* Before or after the commencement of the hearing of an application for an interlocutory injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for an interlocutory injunction which would be admissible upon the trial on the merits shall become a part of the record on the trial and need not be repeated upon the trial. This paragraph shall be construed and applied so as to save any rights of the parties which they may have to trial by jury.

(b) *Temporary restraining order; when granted without notice; duration; hearing; application to dissolve or modify.* A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damages will result to the applicant before the adverse party or his attorney can be heard in opposition; and

(2) The applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith in the clerk's office and entered of record, and shall expire by its terms within such time after entry, not to exceed 30 days, as the court fixes, unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the motion for an interlocutory injunction shall be set down for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character, when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for an interlocutory injunction; and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification; and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) *Security.* As a prerequisite to the issuance of a restraining order or an interlocutory injunction, the court may require the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been enjoined or restrained wrongfully. A surety

upon a bond or undertaking under this Code section submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motions as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the persons giving security if their addresses are known.

(d) *Form and scope of injunction or restraining order.* Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.

(e) *When inapplicable.* This Code section is not applicable to actions for divorce, alimony, separate maintenance, or custody of children. In such actions the court may make prohibitive or mandatory orders, with which notice or bond, and upon such terms and conditions as te court may deem just.

APPENDIX K

GEORGIA, BIBB COUNTY LIMITED WARRANTY DEED

That for and in consideration of the sum of One Hundred and no/100 ($100.00) Dollars and other valuable consideration in hand paid, the receipt and sufficiently of which is hereby acknowledged, the undersigned,

THE CORPORATION OF MERCER UNIVERSITY

(hereinafter referred to as "Grantor"), hereby conveys unto

FLORENCE HICKS ALEXANDER, Ph.D.,

residing at 1173 Spring Centre S. Blvd., Altamonte Springs, Florida 32714 (hereinafter referred to as "Grantee"), her heirs and assigns, IN FEE SIMPLE, the following described real estate, including all improvements thereon, fixtures attached thereto, and all plants, trees and shrubbery located thereon, to-wit:

MAIN CAMPUS PROPERTY:

All that tract or parcel of land lying and being in Monroe County, Georgia, in the City of Forsyth, containing 44 acres, more or less, and being more particularly described as follows: BEGIN at the point on the northerly right-of-way line of Tift College Drive marking the point of intersection of said right-of-way line with the westerly property line of the 17.552 acre tract of land designated as Tract "B" on the plat of property survey prepared for Ingles Markets, Inc. and Old Republic National Title Insurance

Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar, and from said point of beginning run in a westerly direction along the northerly right-of-way line of Tift College Drive to the point of intersection of the northerly right-of-way line of Tift College Drive with the northeasterly right-of-way line of Railroad Avenue; run thence in a northwesterly direction along the northeasterly right-of-way line of Railroad Avenue a distance of 660 feet, more or less, to the southeasterly right-of-way line of College Street; run thence in a northeasterly direction along the southeasterly right-of-way line of College Street a distance of 665 feet, more or less, to the point where said right-of-way line bends to the left and extends in a northwesterly direction; run thence in a northwesterly direction along the easterly right-of-way line of College Street a distance of 392.5 feet to the southerly property line of property now or formerly owned by Julian J. and Minnie Wright; run thence in an easterly direction along the southerly property line of said property now or formerly owned by Julian J. and Minnie Wright a distance of 473.2 feet to the southeasterly corner of said property now or formerly owned by Julian J. and Minnie Wright; run thence in a northerly direction along the easterly property line of said property now or formerly owned by Julian J. and Minnie Wright and a prolongation thereof a distance of 212.6 feet, more or less, to the southwesterly right-of-way line of East South Drive; run thence in a southeasterly direction along the

southwesterly right-of-way of East South Drive a distance of 1,200 feet, more or less, to the westerly property line of Tract "B" shown on the plat hereinabove referred to prepared for Ingles Markets, Inc. and Old Republic National Title Insurance Co. by Kenneth Edward Presley, Georgia Registered Land Surveyor No. 1327, dated July 13, 1994, said point being marked by a 5/8ths inch rebar; run thence south 03 degrees 31 minutes 10 seconds west along the westerly right-of-way line of said Tract "B" a distance of 894.51 feet to the 5/8ths inch rebar hereinabove first referred to located on the northerly right-of-way line of Tift College Drive, which is back to the point of beginning.

ALSO that certain triangular tract of land located in Monroe County, Georgia, and in the City of Forsyth, being bounded as follows: On the southeast by the northwesterly right-of-way line of College Street; on the west by the easterly right-of-way line of James Street; on the north by the southerly right-of-way line of Tribble Street.

NORTHEASTERLY ACREAGE TRACT:

All that tract or pacel of land lying and being in Land Lots 183, 184, 201 and 202 of the 6th Land District of Monroe County, Georgia, containing 98.90 acres according to a plat of a boundary survey prepared for The Corporation of Mercer University by Hugh W. Mercer, Jr., Georgia Registered Land Surveyor No. 1890, dated October 31, 1991, a copy of which is recorded in the Clerk's Office of Monroe

Superior Court in Plat Book 18, Page 5, reference to which is hereby made for a more complete and accurate description of the property hereby conveyed.

This property is conveyed subject to the Permitted Title Exceptions set out on Exhibit "A" attached hereto and by reference made a part hereof.

Grantor WARRANTS the title to said property unto Grantee, her heirs and assigns, against the lawful claims of all persons whomsoever claiming by, through or under the Grantor herein.

Witness Grantor's hand and seal, this 28th day of December, 1994.

THE CORPORATION OF MERCER UNIVERSITY (SEAL)
BY: /s/ R. Kirby Godsby
R. KIRBY GODSBY, President
ATTEST: /s/ John P. Cole

JOHN P. COLE, Secretary

Signed, sealed and delivered
in the presence of:

/s/ Janet M. Cook-Love
(Witness)

/s/ Illegible
Notary Public

My Commission Expires:
(Seal) Edward J. Harrel
Notary Public

STATE OF GEORGIA
My Comm. Exp. 5/7/96

EXHIBIT "A"

1. Zoning ordinances affecting the property.

2. General utility assessments of record.

3. Ad valorem taxes or other assessments for the year 1995 and subsequent years.

4. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises. NOTE: This exception will be deleted as to the Campus Property located southwesterly of Interstate Highway No. I-75 and the Northeasterly Acreage Tract from the title insurance policy upon the receipt of a current survey of said property prepared by a Georgia Licensed Surveyor and upon receipt of a surveyor's inspection report from said surveyor and upon the execution and recording of a deed of correction from The Corporation of Mercer University to the insured describing said property in accordance with said current survey, provided, however, said endorsement to said title insurance policy shall set out any particular matters reflected by said survey or said surveyor's inspection report.

5. Matters reflected on the plat of the boundary survey prepared for The Corporation of Mercer University by Hugh W. Mercer, Jr., Georgia Registered Land Surveyor No. 1890, recorded in the Clerk's office of Monroe Superior Court in Plat Book 18, Page 5, including the following:

(a) A Georgia Power Company right-of-way easement, assumed by the surveyor to the 80

feet in width, crossing the southerly end of the 98.9 acre tract of land in a northwesterly-southeasterly direction. NOTE: There is no recorded right-of-way instrument for this right-of-way easement.

(b) A 20-foot wide permit extending in a northerly direction from the northerly right-of-way line of the Georgia Power Company right-of-way hereinabove referred to.

(c) A 100-foot wide right-of-way extending in a southerly direction from the southerly right-of-way line of the Georgia Power Company right-of-way hereinabove referred to.

(d) A 20-foot wide easement in favor of the City of Forsyth extending in a generally westerly-easterly direction across the 98.9 acre tract of land.

(e) A power line extending in a generally northwesterly-southeasterly direction across the 98.9 acre tract of land.

(f) A chain link fence around an L/P gas tank encroaching onto the southwesterly corner of the 98.9 acre tract of land.

(g) Said plat shows a fence encroaching slightly across the northerly line of the 98.9 acre tract of land.

6. Water and Sewer Easement from Tift College Corporation to The Mayor and Alderman of the City of Forsyth, dated April 5, 1974, recorded in the Clerk's Office of Monroe Superior Court in Deed Book 96, Page 448, having a width of 20 feet. NOTE: The plat of the 98.9 acre tract of land prepared for The Corporation of Mercer University by Hugh W. Mercer, Jr., recorded in the Clerk's Office of Monroe Superior Court in Plat Book 18, Page 5, shows said 20-foot wide easement crossing said property.

7. Right-of-way deed to Monroe County from Tift College, dated September 10, 1959, which is recorded in Deed Book 69, Page 211, which conveys a right-of-way for Tift College Drive, varying in width, and drainage rights in connection with Tift College Drive.

8. Drainage Right-of-Way Easement Agreement to the State Highway Department of Georgia from Tift College, dated February 16, 1961, recorded in the Clerk's Office of Monroe Superior Court in Deed Book 68, Page 389.

9. Condemnation for right-of-way and easement rights in favor of the Department of Transportation, dated April 23, 1987, recorded in the Clerk's Office of Monroe Superior Court in Deed Book 245, Page 197.

10. The rights of first refusal and rights as to sign locations contained in the Real Estate Lease from Tift College Corporation, as Lessor, to Chajomoco, Inc., as Lessee, dated February 9, 1970 (the "Tift Lease"), a short form of which is of record in the Clerk's Office of Monroe Superior Court in Deed Book 81, Page 455.

11. Rights of The Corporation of Mercer University under the Lease Agreement from Florence Hicks Alexander, Ph.D., dated December 28, 1994, a short form of which is recorded in the Clerk's Office of Monroe Superior Court in Deed Book 450, Page 303.

Supreme Court, U.S.
FILED
JUL 30 1998
OFFICE OF THE CLERK

No. 98-25

In The

Supreme Court of the United States

October Term, 1997

FLORENCE HICKS ALEXANDER, Ph.D., an Individual,

Petitioner,

vs.

MICHAEL BOWERS, in his official capacity as Attorney General of the State of Georgia, LEWIS MASSEY, in his official capacity as Secretary of State of the State of Georgia, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Georgia Supreme Court

PLAINTIFFS'/RESPONDENTS' BRIEF IN OPPOSITION

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APPENDIX

Appendix A — Excerpts From April 30, 1997, Hearing Transcript 1a

OPINIONS AND ORDERS BELOW

The Plaintiffs/Respondents acknowledge that the statement of Opinions and Orders Below contained in the Petition [Petitioner's Brief, pages 1-2] is an accurate and complete representation.

STATEMENT OF JURISDICTION

A. The interlocutory injunction order was granted by the Superior Court of Monroe County, State of Georgia, on June 2, 1997, *nunc pro tunc* to May 23, 1997.

B. The Georgia Supreme Court rendered its opinion affirming the trial court's decision, with all justices concurring, on February 23, 1998. Petitioner's motion for reconsideration was ordered dismissed on April 2, 1998. Petitioner's second motion for reconsideration was ordered not allowed filed on April 16, 1998.

C. Plaintiffs/Respondents deny that jurisdiction is proper on the basis of 28 U.S.C. § 1251(b)(3) as there appears to be no attempt by the Petitioner to invoke the Court's original jurisdiction (i.e., compliance with Supreme Court Rule 17, Procedure in an Original Action) other than by this one-time statutory citation in the Petition [Petitioner's Brief, page 2], nor would it be appropriate in this instance. Plaintiffs/Respondents further deny that jurisdiction is proper on the basis of 28 U.S.C. § 1257(a) as the Petition appears to be untimely and further that there is a lack of finality of decision, as more fully set out below.

ERRORS AND OMISSIONS IN PETITIONER'S STATEMENT OF THE CASE

Petitioner has substantially misrepresented to this Court essential material facts in the underlying case and the state court appeal thereof, either by direct misstatement or omission, the most blatant examples of which are set forth hereafter:

Petitioner omitted from her Statement of Facts the allegations by Joyce Oatman and the State of Georgia, which provided the basis for their intervention motions. These allegations were that Petitioner had breached her fiduciary duty to Ebon Foundation by her mismanagement, misappropriation, and commingling of corporate assets. These allegations are contrary to Petitioner's assertion that she is the fee simple owner of the property in dispute [Petitioner's Brief, page 4], which is one of the main contentions raised by Ms. Oatman and the State of Georgia in the underlying civil action. These allegations also are contrary to Petitioner's assertion that the closure of Ebon Academy was due to its unsuccessful fund raising activities, parents' failure to pay tuition and low student enrollment [Petitioner's Brief, page 6], which is one of the main contentions raised by Plaintiffs/ Respondents in the underlying civil action.

Petitioner asserts in her Statement of Facts that she first learned of the granting of the temporary restraining order (TRO) several days after it was granted [Petitioner's Brief, page 7]. However, the record of the underlying civil action is devoid of any documentary evidence or testimony to support this assertion.

Petitioner asserts in her Statement of Facts that the offer to purchase the campus by the General Missionary Baptist Convention was unsolicited and occurred several weeks after the alleged termination of the lease between Petitioner and Ebon

Foundation [Petitioner's Brief, page 6]. However, the record of the underlying civil action is devoid of any documentary evidence or testimony to support these assertions.

Petitioner asserts in her Statement of Facts that a letter terminating Ms. Oatman from the board of Ebon Foundation was sent to Joyce Oatman on February 20, 1997 [Petitioner's Brief, page 7]. However, Petitioner omits from her Statement of Facts that Ms. Oatman denied having ever received the letter. Furthermore, Petitioner omits from her Statement of Facts that evidence was presented that Ebon Foundation had in fact sent the letter to Ms. Oatman by overnight mail on April 24, 1997, the same day on which Ms. Oatman had sought the *ex parte* intervention and TRO. *See Appendix "A," Hearing Transcript of the Superior Court for Monroe County, Georgia.*

Petitioner asserts in her Statement of Facts that she requested the Monroe County Superior Court to conduct a hearing immediately after learning of the TRO, due to the impending closing date for the sale of the campus [Petitioner's Brief, page 7]. However, the record of the underlying civil action is devoid of any documentary evidence or testimony that supports Petitioner's assertion that she made known to the court the problem with the impending closing date prior to the scheduled April 30, 1997, hearing.

Petitioner asserts in her Statement of Facts that the Georgia Superior Court Judge only heard evidence at the April 30, 1997, hearing concerning the issue as to whether or not Ms. Oatman should be allowed to intervene [Petitioner's Brief, page 8]. However, Petitioner omits from her Statement of Facts that this issue was the sole issue that Petitioner chose to raise at the April 30, 1997, hearing. *See Appendix "A," Hearing Transcript of the Superior Court of Monroe County, Georgia.*

Petitioner asserts in her Statement of Facts that the Monroe County Superior Court modified the TRO at the conclusion of the April 30, 1997, hearing to only allow Petitioner to sell the property to the defunct purchaser, the General Missionary Baptist Convention, and only under the expired contract, and goes on to assert that the General Missionary Baptist Convention informed her that they would not be purchasing the property because the contract had expired [Petitioner's Brief, page 8]. However, the record of the underlying civil action is devoid of any documentary evidence or testimony that supports Petitioner's assertions that as of that date the General Missionary Baptist Convention had refused to purchase the property or that they considered the sales contract expired.

Petitioner asserts in her Statement of Facts that at the May 22 and 23, 1997, hearings the Monroe County Superior Court ruled that the interlocutory injunction would remain in place prior to giving Petitioner an opportunity to present evidence [Petitioner's Brief, pages 8-9]. This is simply not true, as the record of the underlying civil action reflects that Petitioner was given a full and fair opportunity to present evidence at all stages of the proceedings.

Petitioner asserts in her Proceedings Below that the Georgia Supreme Court denied both her first and second motions for reconsideration [Petitioner's Brief, page 12]. The record of the underlying civil action reflects that Georgia Supreme Court dismissed Petitioner's first motion for reconsideration [Order, Appendix "H," page 50a] and ordered the Clerk of the Court to not allow the filing of Petitioner's second motion for reconsideration [Order, Appendix "I," page 51a].

REASONS FOR DENYING THE WRIT

There are no compelling reasons to review the Georgia Supreme Court decision on writ of certiorari, and multiple reasons for denying the writ:

(a) The Petition is untimely filed under Supreme Court Rule 13;

(b) The Georgia Supreme Court's ruling regarding the granting of the interlocutory injunction is not final insofar as a right to an appeal to the United States Supreme Court is concerned, as required by 28 U.S.C. § 1257(a);

(c) There are essential facts misstated by Petitioner which change the nature of the legal issues raised by Petitioner;

(d) The alleged conflict with the Georgia Supreme Court's ruling with prior United States Supreme Court decisions is illusory; and

(e) The right and fair result was reached by the Georgia Supreme Court.

Therefore, no constitutional challenge is properly presented for review by this Court.

ARGUMENT

I.

THE PETITION IS UNTIMELY FILED UNDER SUPREME COURT RULE 13.

Supreme Court Rule 13.1 requires that a petition for writ of certiorari to review a judgment of a state's highest court is to be filed within 90 days after the entry of judgment. Considering

this rule alone, this Petition would be untimely filed if based upon date of the Georgia Supreme Court's judgment.

Supreme Court Rule 13.3 provides that a party's filing of a timely petition for rehearing with the lower court will toll the time for filing until the petition for rehearing is granted or denied. Plaintiffs/Respondents argue that presupposed within this rule is a requirement that the petition for rehearing must also be properly filed; that is, accepted by the lower court as a validly submitted pleading in order for Petitioner to avail herself of the tolling aspect of Supreme Court Rule 13.3.

In this case, the Georgia Supreme Court *dismissed* [emphasis added] Petitioner's first motion for reconsideration, and did not *deny* [emphasis added] the motion as alleged by Petitioner. Although the Georgia Supreme Court gave no expressed reasons for the dismissal, it is relevant to note that the Petitioner's first motion exceeded the Georgia Supreme Court's rules on page limitations for motions and, in addition, contained hundreds of pages of extraneous documentary evidence in further violation of the rules. The Petitioner's second motion for reconsideration was *not allowed filed* [emphasis added] by the Georgia Supreme Court, and they did not *deny* [emphasis added] as alleged by Petitioner. Since it would appear that neither one of Petitioner's motions for reconsideration were validly filed with the Georgia Supreme Court, the operative event for this Petition's filing deadline would be the date of the Supreme Court of Georgia's decision, that being February 23, 1998. This Petition was filed with the Court on June 30, 1998; which is 37 days after the 90 day deadline required by Rule 13.1; thus, this Petition is untimely filed and should be dismissed.

II.

THE JUDGMENT OF THE GEORGIA SUPREME COURT LACKS FINALITY OF DECISION FOR THE PURPOSE OF APPEAL TO THIS COURT.

In order for this Court to have appellate jurisdiction pursuant to Petitioner's citation of 28 U.S.C. § 1257(a), the underlying decision by the state's highest court must have the requisite finality of decision for the purpose of appeal. *See, e.g., Southern Pacific Co. v. Gileo*, 351 U.S. 493 (1956).

This Court has on numerous occasions applied the principle of finality of decision to the specific area of the appellate review of temporary and interlocutory injunctions. These cases focused upon whether the decision by the state's highest court regarding the injunctions had the practical effect of deciding the underlying merits of the case. Thus, in the case of *Moses v. Mayor*, 15 Wall. 387 (1872), it was held that a state court's decision to dissolve an injunction lacked finality of decision in that it left unresolved the underlying merits of the case. This rationale was carried forward in *Montgomery Bldg. & Constr. Trades Council v. Ledbetter Erection Co.*, 343 U.S. 962 (1951), where a writ of certiorari was granted but later dismissed as improvidently granted in 344 U.S. 178, because the injunction involved was only temporary and hence not the final judgment which the Court had the power to review. This was so even though, as long as a temporary injunction is in force, it may be as effective as a permanent injunction.

An example of when the Court has granted review of a decision involving an interlocutory injunction is found in *Construction & General Laborers' Union v. Curry*, 371 U.S 542 (1963), where the Court found finality of decision in the ruling of the Georgia Supreme Court reversing a Georgia

Superior Court's ruling refusing to issue an interlocutory injunction in a labor dispute. The Court refused to apply the standard outlined in *Montgomery, supra.*, but only because the issues involved a labor dispute and a substantial claim was made that the jurisdiction of the state court was preempted by federal law. Another example is found in *Board of Commissioners v. Lucas*, 93 U.S. 108 (1876), where the Court found that review of a temporary injunction had the requisite finality when the state supreme court also directed the inferior court to dismiss the underlying complaint, thus making a final disposition of the case.

Applying these decisions to this Petition, it becomes apparent that the decision by the Georgia Supreme Court to affirm the interlocutory injunction of the lower court lacks the requisite finality of decision. The decision in no way decides the underlying merits of the allegations that are the subject matter of the interventions by Joyce Oatman or the State of Georgia. The truth or falsity of their allegations that Petitioner committed mismanagement, misappropriation and commingling of corporate assets remains yet to be decided in the lower courts.

III.

THE PETITIONER HAS MISSTATED AND/OR OMITTED FACTS WHICH CHANGE THE NATURE OF THE LEGAL ISSUES RAISED BY PETITIONER.

Petitioner mistakenly alleges that Joyce Oatman's request for an *ex parte* TRO failed to comply with O.C.G.A. § 9-11-65(b) in that no facts showing immediate and irreparable harm are shown by affidavit or verified complaint, thus violating Petitioner's due process rights [Petitioner's brief, pages 15-16]. This is simply not true, as the Georgia Supreme Court (with the benefit of the entire underlying record) found Ms. Oatman's verified complaint for a TRO in fact satisfied the requirements

of O.C.G.A. § 9-11-65(b)(1) [Opinion, Petitioner's Appendix "A," page 6a].

Petitioner further alleges that the hearing conducted by the Monroe County Superior Court on April 30, 1997, was not meaningful in that it was held after the expiration of the contract to sell the property [Petitioner's brief, page 18]. However, Petitioner omits the key fact that the April 30, 1997, hearing date was requested by Petitioner and the underlying record is devoid of any attempt by Petitioner to raise the issue of the April 28, 1997, closing date for the sale of the campus and the need for a earlier hearing date.

Petitioner further alleges that Monroe County Superior Court judge was "biased," citing several areas of the underlying record for support [Petitioner's Brief, pages 19-20]. However, a closer examination of the record reveals that this contention is meritless:

1. Petitioner alleges that she was not allowed to present evidence concerning the TRO at the April 30, 1997, hearing [Petitioner's Brief, page 19]. An examination of the underlying record reveals that the court fully examined the only contention that Petitioner brought before it — a challenge to Joyce Oatman's standing to intervene and request the issuance of a TRO. *See Appendix A, Hearing Transcript of the Superior Court for Monroe County, Georgia.* Petitioner had a full opportunity to challenge the merits of Ms. Oatman's allegations that supported the granting of the TRO, yet chose to not pursue the matter at that time.

2. Petitioner improperly characterizes the record, by selective citation, concerning the May 22, 1997, hearing [Petitioner's Brief, pages 19-20]. The first

record citation is the court's comments at the conclusion of the evidence presented by the State of Georgia concerning the commingling of corporate and private funds. The matter had been fully presented, and the first record citation reflects the court's ruling that the injunction would be extended to those bank accounts. The second record citation reflects the court's decision after Petitioner again raised the issue of the continuation of the injunction as to the campus property, which due to the late hour the court deferred making a decision until the hearing to be held the next day. At no time was Petitioner not allowed to present her case prior to the court's ruling.

3. Petitioner again improperly characterizes, by selective citation, the record concerning the May 23, 1997, hearing [Petitioner's Brief, page 20]. The record citation reflects the court's comments after a lengthy and thorough presentation by the Petitioner concerning her objection to the continuation of the injunction as to the campus property. The court is indicating at this point, having given the Petitioner full opportunity to present her case, that the court was not inclined to rescind the interlocutory injunction. The only parties "denied" an opportunity were the Respondents, whose desire to cross-examine the Petitioner in rebuttal were deemed unnecessary by the court since the court had decided to leave the interlocutory injunction in place.

Petitioner further improperly alleges that the present status of the interlocutory injunction is a taking without just compensation in violation of the Fifth and Fourteenth Amendments [Petitioner's Brief, pages 22-25]. Specifically, Petitioner alleges that she is currently restrained from selling the campus property to anyone other than the General

Missionary Baptist Convention. This is simply not true, as the underlying record clearly reflects that the Petitioner may market and sell the property to anyone she chooses, subject only to the approval of the Monroe County Superior Court [Transcript, Appendix "D," page 29a].

IV.

THE ALLEGED CONFLICT OF THE GEORGIA SUPREME COURT'S RULING WITH PRIOR UNITED STATES SUPREME COURT DECISIONS IS ILLUSORY.

The Petitioner argues that Georgia Supreme Court's decision affirming the Georgia Superior Court's decision to grant a temporary restraining order on an *ex parte* basis violates this Court's long standing body of case law, citing *Cleveland Board of Education v. Loudermill*, 407 U.S. 532 (1985); *Fuentes v. Parham*, 407 U.S. 67 (1972); *Carroll v. President and Commissioner of Princess Anne*, 393 U.S. 175 (1968), and further citing the United States District Court, District of Massachusetts, in *Krohn-Hite Corporation v. Berube*, 372 F. Supp. 1262 (D. Ma. 1974). However, upon closer examination clearly each of these cases are distinguishable from the present case:

1. In *Loudermill*, 470 U.S. at 535, the case involved two city employees' termination from employment without an opportunity to respond or challenge their dismissal prior to removal. The Court held that due process required a pretermination opportunity to respond, employing a balancing test of the competing interest of the employees' property rights in their employment versus the governments need for expeditious removal of unsatisfactory employees and avoidance of administrative burdens. *Id.* at 542-545. Lacking in

the factual scenario was the aspect of irreparable harm to the government should it not be able to immediately terminate the employees.

2. In *Fuentes*, 407 U.S. at 69-70, the case involved the constitutionality of statutory pre-judgment replevin provisions which could be used to obtain an *ex parte* writ against the purchasers of household goods who had defaulted under their conditional sales contracts. The Court held that due process required an opportunity for hearing before the seizure of another's property, noting that the broadly drawn Florida and Pennsylvania statutes served no important state interest that would justify a summary seizure. *Id.* at 94-96. Again lacking in this factual scenario was the aspect of irreparable harm that would have justified the *ex parte* procedure.

3. In *Carroll*, 393 U.S. at 176-178, the case involved the constitutionality of an *ex parte* restraining order that restrained members of a white supremacist group from conducting public rallies. The Court held that the *ex parte* restraining order was improper because there was no showing that is was impossible to serve or notify the restrained parties and give them an opportunity to respond. *Id.* at 182-183. Again lacking in this factual scenario was the aspect of irreparable harm.

4. In *Krohn-Hite*, 372 F. Supp. at 1263, the case involved whether the underlying record reflected sufficient allegations of irreparable harm to justify the issuance of an *ex parte* restraining order. The court made a determination that there was not a factual basis for a finding of irreparable harm. *Id.* at 1264. Compare to

> the instant case, in which not only the trial court but the Georgia Supreme Court found that there was compelling evidence of irreparable harm from the commingling of the Petitioner's personal assets with those of the corporations and the impending sale of all by Petitioner [Opinion, Appendix "A," page 6a].

In each of the cases relied upon by Petitioner, the distinguishing factor is that there was no showing of irreparable harm to justify the deprivation of a property right without notice. In the instant case, both the trial court and the Georgia Supreme Court rightfully held that Ms. Oatman had properly raised and supported by evidence her allegation of irreparable harm, thus the *ex parte* TRO and resulting interlocutory injunction after full opportunity for hearing is in compliance with constitutional due process requirements.

V.

THE RIGHT AND FAIR RESULT WAS REACHED BY THE GEORGIA SUPREME COURT.

In the final analysis, the bottom line is this — the right and fair result in the underlying action was reached by both the Monroe County Superior Court and the Georgia Supreme Court:

1. The interventions of Joyce Oatman and the State of Georgia, although granted *ex parte*, were granted conditionally and subject to any properly supported objections by the Petitioner. Within six days of the *ex parte* granting of the interventions, Petitioner was given a full opportunity to raise objections, which she did, and which the trial court subsequently denied. The trial court's decision to allow the interventions was fully supported by the record that reflected that

the claims of Ms. Oatman and the State of Georgia were not being adequately represented by the Plaintiffs/ Respondents, thus met the requirements for intervention under Georgia law.

2. The temporary restraining order was granted *ex parte* after a showing was made by Ms. Oatman that immediate and irreparable injury would result. A full hearing regarding the injunction was held within 30 days pursuant of Georgia law; in fact, a partial hearing on the matter was held at the request of the Petitioner within 6 days of the issuance of the TRO, in accordance with Georgia law. O.C.G.A. § 9-11-65(b)

3. The temporary restraining order was properly converted into an interlocutory injunction after Ms. Oatman and the State of Georgia showed that there was substantial commingling of corporate and personal assets by Petitioner.

CONCLUSION

For the reasons given above, Plaintiffs/Respondents, therefore, urge this Court to deny the writ petitioned for in this case.

Respectfully submitted,

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APPENDIX A — EXCERPTS FROM APRIL 30, 1997, HEARING TRANSCRIPT

IN THE SUPERIOR COURT OF MONROE COUNTY STATE OF GEORGIA

CIVIL ACTION
FILE NO.:
97-CV-150

TYRE E. CHAPMAN, et al.,

Plaintiffs,

v.

EBON FOUNDATION, INC., d/b/a EBON INTERNATIONAL PREPARATORY ACADEMY, a foreign corporation, and FLORENCE HICKS ALEXANDER as Director of Ebon Foundation, Inc., And Individually,

Defendants,

v.

JOYCE OATMAN, as Director of Ebon Foundation, Inc.,

Intervenor.

TRANSCRIPT OF PROCEEDINGS HEARD
ON APRIL 30, 1997, BEFORE
HONORABLE ARCH MCGARITY, JUDGE,
FLINT JUDICIAL CIRCUIT, PRESIDING
IN MONROE SUPERIOR COURT

Appendix A

HEARING TRANSCRIPT — PAGES 11-13, 45-46

"THE COURT: Okay. That deals with that one.

We had also, I believe, as part of today's action when we had our conference in chambers, it was stated that part of the challenge to the granting of the injunction, as well as the motion to dissolve that and/or modify it, would be a challenge to Ms. Oatman's intervention in this case, her standing to maintain part or as an individual in this case, as a director of Ebon Foundation, Inc., I believe is how is it styled.

Mr. Bridges, you expressed some concern about going forward on the standing issue today; is that correct?

MR. BRIDGES: Yes, your Honor.

THE COURT: Okay, why don't you state your objection on the record.

MR. BRIDGES: At this time, if the Court will allow us just a bit of latitude, I believe I will be able to go forward. There is a document that I am waiting to receive from Macon right now. Mr. Oatman left about 30 minutes ago to pick it up, so he should be here with it shortly. Otherwise, with that caveat, we are prepared to go forward.

THE COURT: If I heard you correctly, that when Mr. Oatman gets here with this document, you will no longer have an objection to proceeding on the standing issue?

MR. BRIDGES: That's right.

Appendix A

THE COURT: We will go ahead and get into the motion that Mr. Wangerin has made and listen to the argument, and hopefully, Mr. Oatman will be here by the time they finish. If not, we will postpone hearing from you on the standing issue until such time as he arrives. I think we have enough time today to do that.

MR. BRIDGES: Thank you, your Honor.

THE COURT: Now, why don't we proceed? Are you ready to proceed on your motion?

MR. WANGERIN: Yes, your Honor . . ."

* * *

MR. BRIDGES: Ms. Oatman, I will show you what we have marked as Plaintiff's Exhibit 1.

MS. OATMAN: Yes.

MR. BRIDGES: Will you identify that, please?

MS. OATMAN: This was a Fed Ex that I asked for and had received the next day. I told my sister that I had not received a letter of resignation. I asked her to send me another. And she sent one. She sent it the very next day.

MR. BRIDGES: Is that the Fed Ex that she said she was sending to you, as far as you know?

MS. OATMAN: Yes, as far as I know.

MR. BRIDGES: What day did you receive that Fed Ex?

MS. OATMAN: I asked for it Wednesday. Thursday or Friday, it was to my house. When I returned from Georgia, it was there.

MR. BRIDGES: So, you got it Saturday?

MS. OATMAN: Yes, when I returned, it was there.

MR. BRIDGES: When you asked her for the documents, you weren't asking her to resign, were you?

MS. OATMAN: She asked me had I received the letter of resignation that I had to sign and send back to her. I told her, no, I had not received it. She said, well, I will send you another. I will Fed Ex you another one the very next day. And I am assuming she did, but by the time that she said that she going to Fed Ex it, I was on my way to Georgia.

When I got back from Georgia, it was there. This is the package that it came in.

MR. BRIDGES: That is the package that it came in?

MS. OATMAN: Yes.

MR. BRIDGES: And you got it Saturday

MS. OATMAN: Yes, when I returned.

MR. BRIDGES: That would have been April 26th?

* * *

No. 98-25

FILED
JUL 30 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1997

FLORENCE H. ALEXANDER, PH.D., An Individual,

Petitioner,

v.

MICHAEL J. BOWERS, Attorney General of Georgia, LEWIS MASSEY, Secretary of State of Georgia, in their official capacities, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENTS

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QUESTION PRESENTED

I.

Should this Court grant certiorari to review a restraining order at an early stage of civil, regulatory litigation, complicated by removal and bankruptcy proceedings?

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PART ONE

STATEMENT OF THE CASE

Parents and students of a closed preparatory school commenced this civil suit in the Superior Court of Monroe County, Georgia, on March 14, 1997. They sued Petitioner and the foreign non-profit corporation, Ebon Foundation, Inc., seeking equitable and legal relief under various theories. In part, the original complaint seeks to reach Petitioner by piercing the corporate veil.

On April 24, 1997, Petitioner's sister moved to intervene in order to bring a derivative action. She also successfully moved for an *ex parte*, temporary order restraining a pending sale of the school facility. Respondents in this Brief, the Secretary of State and the Attorney General of Georgia, moved to intervene in the suit on April 30, 1997, at which time the Superior Court also commenced the first of two days of interlocutory hearings. The Secretary of State alleges violations of the Georgia Charitable Solicitations Act, O.C.G.A. §§ 43-17-1 *et seq*. The Attorney General alleges that Petitioner so disregarded the corporate status of Ebon Foundation, Inc., that its assets became a charitable trust. The State Intervenors sought judicial protection for the charitable assets. [The Georgia Supreme Court has held that the conventional operation of a college by a corporation does not constitute a charitable trust. *Corporation Of Mercer University v. Smith*, 258 Ga. 509, 371 S.E.2d 858 (1988). Also, Ebon is a District of Columbia corporation. The Georgia Nonprofit Corporations Code excepts foreign corporations from certain powers it gives the Attorney General in respect to domestic, charitable corporations. O.C.G.A. §§ 14-3-140(6)

(definition of "corporation"); 14-3-170 (powers of the Attorney General over charitable corporations); 14-3-1302(a)(2) (describing charitable corporations). The Attorney General has traditional powers over charitable trusts. O.C.G.A. § 53-12-115.]

In a subsequent hearing the Superior Court sealed a sales contract before it but permitted a sale under its terms, so long as the sale proceeds are placed into the registry under supervision of a limited receiver. [The State considers the content of the sealed contract material, and a brief analyzing its terms with respect to issues in this case is under seal in the record of the Georgia Supreme Court.] The Superior Court said that it would consider approving a sale on other terms. The Superior Court also granted the motions to intervene, approved an application for interlocutory appeal, and stayed discovery. The Georgia Supreme Court allowed interlocutory review on July 14, 1997.

Ebon Foundation, Inc., filed a Chapter 11 bankruptcy petition in the Middle District of Florida on November 11, 1997. Notice of the stay was filed in Superior Court but not concurrently in the Supreme Court. Ebon Foundation, Inc., participated in the appeal to the Georgia Supreme Court by counsel, through briefs and oral argument.

Petitioner filed a notice of removal of this suit under 28 U.S.C. § 1452 in the Middle District of Georgia on February 10, 1998. Notice of the removal was filed in Superior Court but not concurrently in the Supreme Court, which decided the appeal on February 23, 1998. Petitioner participated in the appeal to the Georgia

Supreme Court by counsel, through briefs and oral argument. After the Supreme Court affirmed the trial court orders, Petitioner moved for rehearing *pro se* on March 5, 1998. In the first part of her motion for rehearing, she asserted removal and attached as an exhibit the notice of removal.

The State Intervenors responded only with respect to the issue of removal. The State advised the Court that it believed the Georgia Supreme Court had jurisdiction until it received the notice of removal, i.e. until Petitioner moved for rehearing. Petitioner replied, and the Georgia Supreme Court dismissed the motion for rehearing on April 2, 1998, and refused to allow a second motion to be filed.

In the Middle District of Georgia, State Intervenors have filed a motion to remand, contending that the Eleventh Amendment prevents removal and contending in any event that the action was one by the State enforcing its police powers.

At the request of the Bankruptcy Court Judge presiding over the Chapter 11 of Ebon Foundation, Inc., the parties, including Petitioner and Respondents, have consented to a June 15, 1998, order in the Middle District of Georgia, which stays proceedings in this suit, including the removal and remand issues, pending events in the Bankruptcy Court of the Middle District of Florida. The Bankruptcy Court is awaiting the report of an Examiner. There is related, collateral litigation involving this general situation in which the State is not involved. The State has had no opportunity to conduct adversarial discovery in this suit.

To summarize, the case is at a preliminary stage and in a complicated status. The State has advised the Georgia Supreme Court, to which the writ would be directed, that the suit is removed from state jurisdiction. There is a stay of the State's motion to remand the suit to state jurisdiction on Eleventh Amendment and police power grounds. The sorting out of the property interests of the Foundation and Petitioner, the State's goal in this suit, remains an active inquiry of the Bankruptcy Court.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI.

The State respectfully submits that this case is not ripe for review. In any event the intervention of the State has not deprived Petitioner of property. At most the fruit of that intervention has been an order requiring the deposit of sale proceeds into the registry and a need to apply for separate approval of a sale on any other terms. Nor does the State seek any property. It seeks only that charitable assets remain in their status, or be properly expended for charitable activities, and that charitable solicitations follow Georgia law. The State, therefore, also respectfully submits that no issue is presented which warrants review by certiorari.

CONCLUSION

WHEREFORE, for all the above and foregoing reasons, Respondents pray that this Court deny this petition for a writ of certiorari.

Respectfully submitted,

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